SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 226.

THE UNITED STATES, APPELLANT,

vs.

C. S. WILSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

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1 *Bill filed June 6th*, 1878.—*Lewis T. Baxter, Cl'k.*

Circuit court of the United States for the middle district of Tennessee.

THE UNITED STATES OF AMERICA *vs.* C. S. WILSON, IN HIS OWN RIGHT, AND AS CO-administrator of E. L. Allen, with M. D. Hampton, administrator, Alice Allen, widow of E. L. Allen, Fannie Lee, Maud, and Rob't Allen, minor heirs of E. L. Allen, deceased, who have no regular guardian, all of whom reside in the middle district of Tennessee, and county of Lincoln; John T. Gill, who resides in the county of Lincoln.	In equity.

To the honorable the judges composing the circuit court of the United States for the middle district of Tennessee:

The United States of America, through the district attorney, James A. Warder, most respectfully represent and show to your that in the year 1867 and previous years there was a firm of distillers doing business within the county of Lincoln, and the middle district of Tennessee,
2 under their firm-name of Alexander and Company, of which firm E. L. Allen, now deceased, was a member and a partner. That said firm became and were indebted to the United States of America for tax on distilled spirits in the sum of three thousand and fifty-seven dollars and sixteen cents, which accrued as follows: fourteen hundred and eighty-four dollars and seven cents tax, fifteen hundred and seventy-three dollars and nine cts., penalty and tax, and for this amount were duly assessed under the statutes of the United States in such cases on the July list for 1867; that being so assessed and so indebted, the said firm of Alexander & Co. failing to pay as required by law, J. W. C. Bryant, collector of internal revenue for the fourth collection district of Tennessee, of which collection district the county of Lincoln was a part, did, on the 21' day of January, 1876, issued, as under the law he was authorized to do, is distress warrant for the collection of said taxes and penalty, which distress warrant, being duly issued as aforesaid, came to the hands of W. B. Nicks, a deputy collector of internal revenue in and for the fourth collection district of Tennessee, and he not being able to find a sufficiency of the goods and chattels of the firm, or personal rty of either of the partners, did on the 22d day of January, 1876, y the same on all the right, title, claim, and interest of whatever description, legal or equitable, that E. L. Allen had in and to the g-described parcels of land lying and being in the county of Lin- bounded as follows:

1. Bounded on the north by James Vaughan lot, on the east elbyville and Fayetteville turnpike road, on the south by a street roperty of W. N. Wright, and on the west by a lot owned by ompson and wife.

2. Bounded on the north by a street and the property of D

B. Holman, on the east by a lot of Alexander Johnson, on the south by a lot of Louis Bright, on the west by the property of S. G. Woods.

Lot No. 3. An undivided one-half interest in the livery stable and ground now occupied by E. C. McLaughlin, and bounded on the north by the property of J. G. Gill, east by the property formerly owned by R. Furguson, south by a street and the property of E. C. Wilson, on the west by a street leading from the square to the rock bridge across Elk River.

Lot No. 4. A house and lot now occupied by D. J. Carter as a saloon, and bounded on the north by a street, east by the property of B. F. Goodrick, south by the property of John Bonner, west by the property occupied by Dean and Neeley, it being the house and lot purchased by said E. L. Allen from Douchet. And they further show your honors that after having so levied and given all the notices as required by law, both before and after said levy, and after having advertized as required by law agreeable to and in accordance with said notice and advertisement and postponement, he, the said W. B. Nicks, deputy collector aforesaid, did offer the same for sale, at the court-house door, in the town of Fayetteville, it being a place nearer than five miles of said land so sold, on the 25' day of March, 1876; that said lots and parcels of land were sold separately at the minimum price placed on each; that is to say, Lot No. 1, at the minimum price of three hundred and sixty four dollars; Lot No. 2, at the minimum price of two hundred and twelve dollars and fifty cents; Lot No. 3, at the minimum price four hundred and fourteen dollars; and Lot No. 4, at the minimum price of (818) eight hundred and eighteen dollars; and said lots being so offered as aforesaid at the minimum price as herein set out, and after having been cried a reasonable length of time, and no person offering for said lots, or either of them, the minimum price, the same were purchased therefore by the United States of America in accordance with the statutes in such cases made and provided.

Said distraint warrant, together with the returns and levies thereon is herewith filed marked Exhibit A to this bill. And they further show to your honors that no one appearing to or redeeming said lands within the time provided by law, on the 29th day of September, 1877, D. B. Cliffe, collector of internal revenue, who was the successor in office of J. W. C. Bryant, did convey by deed under and virtue of said assessmer distress warrant, levy and sale thereunder all the right, title, cl and interest that E. L. Allen had in said parcels of land to United States, and the same was duly acknowledged and reco in the register's office in Lincoln Co., in Book K, pages 3334 & 5. original deed is herewith filed, marked Ex. B to the bill. And, fu complaining, they allege and show that said E. L. Allen at the time sa ternal-revenue taxes became due and were payable was the owner holding the legal title to said parcel of lands and that the taxes af were a lien on said land from the time they became due, payable, mandable. That notwithstanding said fact that E. L. Allen a Wilson, conspiring and confederating to hinder delay and defra orator in the collection of their debts, on the 14th day of Januar E. L. Allen did make a pretended sale and conveyance of said t land by deed to the defendant, C. S. Wilson. That the conveyan ported to be on its face a deed absolute from the aforesaid E. L. A

the defendant, C. S. Wilson, conveying to him in fee the aforedescribed tracts of land, which conveyance on the day and date of the same
7 was registered in the register's office in Lincoln County, where the same remains of record, and your orators now show your honors that said conveyance, although absolute on its face was not so in fact, but that on the contrary a secret and written agreement existed between C. S. Wilson and E. L. Allen, by which it was converted into an assignment, with benefits reserved to E. L. Allen, and was made for the purpose of hindering, delay, and defrauding your orator in the collection of their debts; and they further allege and show that on said 14th day of January, 1876, E. L. Allen was insolvent, and that said conveyance to C. S. Wilson, instead of being a deed absolute, was a general assignment of all of his property subject to execution, nothing being excluded from said assignment except some little property that was encumbered with prior liens, and that he, the said E. L. Allen, was insolvent, and the conveyance to C. S. Wilson with the private agreement was an assignment of all of his effects within the meaning of section 3466 Revised Statutes of the United States.

And, further, that your orators are advised, informed, and so
8 charge that since this assignment, levy, and sale and assessment one J. Y. Gill is in possession of and claiming said lot No. 3, by some pretended purchase or process set on foot under said conveyance; of the exact notion of his claim they are not advised; and they further show that since these proceedings were had E. L. Allen has departed this life, intestate; and the defendants, C. S. Wilson and W. H. Hampton, are his administrators, and the estate being insolvent are proper parties in their repres[illegible]e capacities; and that he left surviving him his widow, Alice Allen, [illegible]is minor heirs, Fannie Lee, Maud, and Robert Allen, who are minors and have no regular guardian. The widow has not been endowed. And further that the defendants, Wilson and Gill, sometimes pretend that they, as venders under said fraudulent conveyance, are the proper and true owners of said land and that said conveyance is valid. All of which acts, doings, and pretenses are contrary to equity and good conscience and tend to the manifest wrong and injury of your orator. In considera-
9 tion and for inasmuch as your orators can only have adequate relief in your honor's court, where matters of this nature are properly cognizable and relievable, they pray to be permitted to file this bill to have said conveyance as made by the said E. L. Allen to the said C. S. Wilson declared fraudulent and void. That the permanent lien of your orators on said land for the taxes be adjudged and declared, that the priority of your orators be maintained and decreed, and the pretended conveyance of Allen to Wilson be removed as a cloud upon their title, and account if need be for rents and a writ of possession to your orators in possession.

To the end, therefore, that the said C. S. Wilson and the other defendants show why your orators should not have the relief hereby prayed and may, upon their respective corporal oaths, and according to the best and utmost of their knowledge, remembrance, information, and belief, true, direct, and perfect answer make to such of the several interrogations as they are required to answer—

1st. Let C. S. Wilson answer whether there was an agreement between himself and E. L. Allen other than that contained in the deed.

2d. What the terms and conditions of said agreement were. How long he has been in possession of said property.

Let M. D. Hampton answer—

1st. What interest, if any, he has or claims in this property.

Let J. T. Gill answer—

1st. What interest he claims in said property.

2d. How long he has been in possession of the same.

3d. If in any purchase of said property he purchased for himself or any other person; if so, whom?

And that in addition to the specific relief herein prayed, your orator may have such further or other relief in the premises as the nature and circumstances to this honorable court shall seem meet, and may it please your honors to grant unto your orators a writ of subpœna, issue from and under the seal of this court, directed to the defendants and commanding them on a day certain therein to be named and under a certain
11 penalty to be and appear in this honorable court, then and there to answer all and singular the premises, and to perform and abide such further order, direction, and decree as may be made against them; as in duty bound they will ever pray.

JAMES A. WARDER,
Solicitor of Complainant.

Subpœna to answer.

The President of the United States of America to the marshal of the middle district of Tennessee, greeting:

You are hereby commanded to summon C. S. Wilson and C. S. Wilson and M. D. Hampton, administrators of E. L. Allen, deceased, Alice Allen, widow of E. L. Allen, deceased, and Fannie Lee, Maud, and Robert Allen, minor heirs of E. L. Allen; and John T. Gill, if to be found in your district, to be and appear before the judges of the circuit court of the United States, in the sixth circuit for the middle district of Tennessee at the Federal court room, at Nashville, in said State, on the 1st Monday in August next, then and there to answer a bill filed on the equity side of said
12 court by the United States. Herein fail not, and have then and there this writ.

Witness the Hon'l Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this the 18th day of June, in the year of our Lord 1878, and of the Independence of the United States the 102d year.

[SEAL.] LEWIS T. BAXTER, *Clk.*

Memorandum.—The defendants are required to enter their appearance in the clerk's office on or before the 1st Monday in August next or the bill will be taken for confessed and set for hearing ex parte.

LEWIS T. BAXTER, *Clk.*

(Endorsed:) Came to hand day issued and ex'd as commanded this July 1st, 1878, by making known to each of the within-named def'ts the contents of this spa. to ans., & at same time delivering to them copies of same, and also copies of bill. E. S. Wheat, U. S. M., by James M. Davis, dep'y.

Answer.

Filed Aug. 15th, 1878.

LEWIS T. BAXTER, *Clk.*

Circuit court of the United States for the middle division of Tennessee.

THE UNITED STATES OF AMERICA, Compl't,
vs.
C. S. WILSON, IN HIS OWN RIGHT AND AS CO-administrator of E. S. Allen, with M. D. Hampton, administrator; Alice Allen, widow of E. L. Allen, Fannie Lee Allen, Maud Allen, and Robert Allen, minor heirs of E. L. Allen, deceased, and John T. Gill, Deft's. } In equity.

The joint and separate answers of C. S. Wilson and M. D. Hampton, administrators of E. L. Allen, and of C. S. Wilson and John T. Gill in their own right. These defendants, reserving the usual benefit of exception, &c., and answering so much of said bill as they are advised it is proper for them to answer, answering say: They are willing to admit that during some two or three months in the year 1866, and the like number of months in the year 1867, there was a firm of distillers doing business in the County of Lincoln and the middle district of Tennessee under their firm-name of Alexander & Co., of which firm E. L. Allen was a member, and that he is now dead; but they deny that said firm existed in previous years to the year 1866. Respondents deny that said
14 firm ever became legally or equitably indebted to complainant in the sum of $3,057.16, or any other sum in the manner and at the time charged in complainant's bill, and upon this point they call for strict proof. What assessments complainant through its subordinates may have placed on its tax books these respondents have no means of knowing, but they are advised that whenever a government of paramount force comes into a court of equity, it must into court with clean hands, and before asking others to do equity it must do equity itself; and respondents are advised that under a bill filed as in this cause, to set aside a pretended fraudulent conveyance with a view to let in on the conveyed property the claim or debt supposed to be due from the pretended fraudulent conveyor, the defendant conveyors have the right to show that such claim or debt is inequitable or unjust; and particularly have defendants Hampton and Wilson, as administrators of E. L. Allen, the right to show that said assessment was unjust and invalid, and that neither they nor their intestate ever had the opportunity to show that said pretended debt was inequitable and illegal
15 either before the assessor, the collector, or commissioner of internal revenue, and that this is their first opportunity to do so. The origin of said pretended claim is as follows: Said firm of Alexander & Co., in April or May, 1867, had on hands some 2,060 proof gallons of whiskey, worth then in the market $3¼ per gallon, and in the aggregate $6,695,00. Not having the money with which to pay the taxes on said spirits, amounting to some $4,750.00, said firm applied to the deputy collector, one Farrer, at Fayetteville, for permission to ship said whiskey to Memphis, which he

permitted them to do on their giving bond and security to pay said taxes when the same should have been sold in Memphis, which bond they gave; and thereupon said firm shipped said spirits by wagon some 30 miles, to Huntsville, Alabama, and placed them in an old warehouse made of frame and very open, intending to ship them the next morning by railroad to Memphis, said warehouse being near the railroad depot. On the day on which said spirits arrived in Huntsville it was seized by one John-
16 son, the collector at Huntsville, by order of the commissioner of internal revenue, on information by one Clotworthy, an informer in the revenue department, who, as the law then stood, would have received one-half the proceeds of said whiskey if it had been forfeited to the Government. The charge was that the 2,060 wine gallons of said spirits contained more proof gallons than it had been assessed at. This was the only charge made against it. By order of the Government the spirits were regauged and found to be substantially as originally gauged, and the charges against it dismissed in a few days after the seizure. But the Commissioner of Internal Revenue, or the collector, refused to either let the spirits be removed from said warehouse up into a safe and secure house in Huntsville, or to be shipped on to Memphis, and appointed an agent, one W. M. Alexander, as agent for the Government to sell it from time to time. There was only a local demand for said spirits at Huntsville, Alabama, and the result was that the selling of it stretched from May, 1867 until December, 1867, and the spirits diminishing in quantity from
17 2,060 gallons to only 850, or thereabouts, sold and realized upon. Thus the Government only got some $2,800 on spirits worth some $6,700.00, leaving a balance of some $1,400.00 due as taxes on said spirits, which, with 5 per cent. damages and interest thereon at 12 per cent. per annum, constitutes the claim sued upon in this proceeding. Alexander and Co. again and again asked the Government agent to either ship said spirits out of said building to Memphis or up into a secure building in Huntsville, Ala., informing him that the spirits were being stolen from the old warehouse. The agent's reply was that he knew it, but he could do nothing; that his orders were that it must remain where it was.

Collectors Ramsey, Mullins, and Bryant, recognizing the fact that the claim was grossly unjust, refused to take any steps to collect it, until the latter was forced to issue his distress warrant by a special agent of the Department after a lapse of nearly nine years. It will be seen that the original balance was only $1,484.70, and it has swelled from that amount to $3,157.70 by the 5 per cent. penalty and interest at the rate of 12 per cent. per annum. Respondents here insist that if complainant is
18 allowed to enforce his demand for anything it shall be only for the $1,484.70, and if interest is allowed at all it shall only be computed at 6 per cent. per annum, inasmuch as the notice required by law was never given until just before the sale of the lands referred to in complainants' bill, before the 5 per cent. penalty and the 12 per cent. interest can attach thereto. Such is the history of this claim. To say that it is just is a burlesque on the word, but when complainant adds to the original amount $1,573.00 penalty and interest it is adding absolute cruelty to injustice. Respondents will be able to show that all through the intervening time between 1869 and 1876, the time the levy of this claim was made on his property, E. L. Allen was amply able to have paid this claim,

and it is not using too harsh a phrase to say it was absolute cruelty to him on the part of the Government to hold up this claim for nine long years, as if it was never to be collected, and then come down on him with 5 per cent. penalty and 12 per cent. interest per annum. The simple
19 truth is that the Government of the United States, in raising the clamor it has in this case, is "shouting for rights with rapine in its soul."

Respondents are advised that inasmuch as complainants have brought respondents into court they have the right to have said claim investigated. That respondents Wilson & Gill & Hampton have the right, before a conveyance to them can be declared fraudulent and void for the purpose of letting in upon the property so conveyed the demands of complainant, to have such demands investigated and the fact ascertained whether or not the demands of complainant are founded in justice and equity; and respondents Hampton & Wilson, as administrators of E. L. Allen, are advised that they have the right to file for so much of the foregoing answer as a cross-bill as relates thereto and have a decree over against complainant for the difference between the $2,800 realized by the Government on said spirits plus the $1,484.70 aforesaid, and the $6,700, the value thereof so lost as aforesaid by the carelessness, negligence, and illegal action of complainants' agents, and they now reserve the right to ask at the
20 proper time that it be filed as such cross-bill. Further answering, respondents say they have no knowledge of the facts stated from and beginning with the words "and for the amount when duly assessed," &c., on page two of complainants' bill, down to and including the words "the original deed is herewith filed, marked Exhibit B to this bill," on page six thereof; and respondents deny the truth thereof as set forth in complainants' bill and call for strict proof thereof so far as these allegations may effect the rights and equities of these respondents; and particularly do respondents call for the strictest proof of the correctness of all assessments and other documentary papers therein referred to, and demand that the originals thereof be produced, as required by law; that they be procured as required by law, and if the originals be lost that secondary evidence of their contents be not admitted, except under the rules required by law and the practice of the courts.

As to the allegations in complainants' bill in reference to the conveyance of the 14th January, 1876, from E. L. Allen to this co-re-
21 spondent C. S. Wilson, respondents Hampton and Gill know nothing in reference thereto, and so far as the facts referred to may reflect upon their rights they call for strict proof.

And respondent Wilson, answering in reference thereto, says that he denies that at the time said internal revenue became due and payable E. L. Allen was the owner in fee simple holding the legal title to the parcels of land described in complainant's bill; he denies that said taxes were a lien on said lands at the time said taxes became due and were demandable or payable; he denies that on the 14th day of Jan'y, 1876, fraudulently conspiring and confederating to hinder, delay, and defraud complainant, E. L. Allen did make a pretended conveyance to him by deed of the tracts of land described in complainants' bill. He admits the execution of the deed referred to, that it is absolute on its face, that it was duly registered in the register's office of Lincoln County, and that it there remains of

record; but he denies that, although absolute on its face, it was not so in fact; he denies any and all secret, verbal, or written agreements
22 between himself and E. L. Allen by which it was converted into an assignment with benefits reserved to E. L. Allen. He denies that said conveyance of Jan'y 14th 1876, was made for the purpose of hindering and delaying complainants or any other creditor in the collection of their debts, but on the contrary it was made for a full, not to say extravagant consideration paid and to be paid to and for said E. L. Allen in perfect good faith. The fact is respondent Wilson never dreamed of any such claim against E. L. Allen on the part of the Government of the United States on the 14th day of January 1876 as the one set up in complainants' bill and never heard it until several months thereafter. It had slumbered in the office of the collector of internal revenue at Shelbyville for nearly nine years and Mr. Allen never believed so unjust a demand would ever be dug up from its Rip Van Winkle sleep.

Respondents expressly deny that on the 14th day of Jan'y, 1876, E. L. Allen was insolvent; they deny that the conveyance from E. L. Allen to C. S. Wilson of that date was a general assignment of all his property within the meaning of section 3466 of the Revised Statutes of the
23 United States, and that said deed left none of the property of said Allen, except some little property which was encumbered with prior liens, subject to execution. They admit respondent Gill has been in possession of lot No. 3 for the past ten months, but deny he has been in possession of said lot ever since the assessment, levy, and sale aforesaid made for the benefit of the United States.

The facts in reference to lot No. 3 are as follows: Said lot was sold by decree of the county court in the case of G. B. Miller vs. W. G. Miller, on the 21st of November, 1872, to E. C. McLaughlin & T. J. Price. E. L. Allen subsequently purchased Price's interest by a verbal or unregistered transfer. At the July term, 1876, of said court, some $390.00 of the purchase-money being due thereon, a judgment was taken against said McLaughlin and Price, and execution thereon being returned *nulla bona*, said court ordered said lot to be sold to satisfy said judgment for the purchase money. At that sale, it being a final one and free from the equity of redemption, respondents Wilson and Hampton became the pur-
24 chasers, and subsequently sold it to their co-respondent Gill. The record of the above facts will be produced at the hearing. Respondents admit that E. L. Allen has died since the foregoing deed of Jan'y 14th, 1876 was executed; and that respondents Hampton & Wilson are his administrators; that the names of his widow and children are properly set forth in complainants' bill; that his children are minors, without any regular guardian. Defendants Wilson and Gill not only "sometimes" but "all times" claim and allege, that as venders, they are the true and proper owners of said lands; and that said conveyances are valid.

In answer to the special interrogations propounded in complainants' bill, respondents answer as follows:

C. S. Wilson says, in answer to interrogatories propounded to him, as follows:

1st. There was no agreement between himself and E. L. Allen, other than is contained in the deed, which deed is herewith filed, marked Exhibit

A, to this answer, except the paper copied into and made a part of the answer of their co-defendant Mrs. Allen.

3d. He has been in possession of said property ever since his
25 purchase from E. L. Allen, of Jan'y 14th, 1876, receiving such rents thereon as became due thereafter, except as to said lot No. 3, which he thinks had been leased and the rents arranged some way with E. L. Allen. As he supposed the lien thereon for the purchase-money would be strictly enforced, he paid but little attention to lot No. 3.

Respondent Hampton, answering the special interrogations propounded to him, says he has no interest whatever in the property referred to in the interrogatory.

Respondent Gill, answering the special interogations propounded to him, says:

1st. He claims the absolute title in said lot No. 3, subject alone to a lien in favor of Hampton and Wilson for purchase-money.

2d. He has been in possession of said lot since about Oct. 1st, 1877.

3d. He purchased said lot No. 3 entirely for himself and no other.

Having fully answered, respondents ask to be hence dismissed with their costs.

J. W. NEWMAN,
Solicitor for respondents.

26 STATE OF TENNESSEE,
Lincoln County:

C. S. Wilson, W. D. Hampton, and John T. Gill personally appeared before me and made oath in due form of law that the facts stated in the foregoing answer are true, to the best of their knowledge, information, and belief.

C. S. WILSON.
M. D. HAMPTON.
JNO. Y. GILL.

Sworn to and subscribed before me this 12th day of Aug., 1878.

_____ _____,
Notary Public of Lincoln County, Tennessee.

Witness my hand and notarial seal this 12th day of Aug., 1878.
W. A. GILL, JR.,
Notary Public.

Notary fee impending seal, $1.

Answer of Mrs. Alice Allen.

Filed 26th day of Oct., 1878.
E. R. CAMPBELL, *Clk.*

The answer of Alice Allen to a bill filed against herself and others by the United States of America, in the circuit court of the United States for the middle district of Tennessee.

27 Defendant saving and reserving the usual benefit of exceptions, &c., to complainants' bill, for answer thereto says, that as to the existence of a firm of distillers doing business under the name of Alexander

& Co., and their indebtedness to the Government for taxes as alleged in the bill, she knows nothing. Defendant, of her own knowledge, knows nothing of the issuing of a distress warrant by J. W. C. Bryant, nor of the levy of the same by W. B. Nicks, upon the real estate mentioned in the bill, and the sale of said realty thereunder, and the purchase of the same by the U. S. of America. Defendant demands strict proof of all of these allegations so far as they may effect her rights. Defendant denies that the taxes mentioned in the bill were ever at any time a lien on the land mentioned in the bill.

Defendant admits that on or about the 14th day of January, 1876, her husband, E. L. Allen, conveyed by deed, which upon its face purported to be a deed in fee simple absolute, the land aforementioned to C. S. Wilson. She admits that contemporaneous with the execution of this deed by her husband another written agreement was entered into between the parties. Said agreement was in the words and figures, viz:

28 "JULY 14TH, 1876.

Whereas E. L. Allen has this day conveyed to me, by deed absolute on its face, three lots in the town of Fayetteville, and his individual half interest in the livery stable now occupied by E. C. McLaughlin, for the consideration of two thousand dollars, this is to show that said conveyance was made for the purpose of securing and indemnifying me against loss as his security on two notes to the 1st National Bank of Fayetteville, one for $1,000 and the other for $450, and one to W. B. Martin for $400.00, and one to Richard Wyatt for $600.00, which indemnity is to extend to the renewal of said notes or any part thereof, and when said notes are paid off I am to recover said lots & said half undivided interest in said livery stable to said Allen.

Witness my hand and seal.

C. S. WILSON.

Defendant denies, however, that this agreement or the deed executed at the same time was fraudulent, or that there was any conspiracy between her husband and Wilson to perpetrate a fraud upon the U. S. Government or any body else, or that there was any secret whatever in regard to
29 the transaction. Upon the contrary, defendant avers that said deed was executed "bona fide" for the purposes set forth in the contemporaneous agreement above spoken of, and that all of the debts mentioned in said agreement as being secured by the aforesaid deed of conveyance of the land mentioned in the bill were bona fide subsisting obligations of her husband at the time of the execution of the said deed and agreement, and defendant, C. S. Wilson, was bona fide the security of her husband; was actually bound for him as such, as is stated in said agreement, and the debts mentioned in said agreement are some of them still unsatisfied or were paid off and satisfied by said Wilson.

Defendant insists that the legal effect of all these facts is to make the conveyance spoken of in complainants' bill only a mortgage, and under the laws of the State of Tennessee defendant is entitled to dower out of said land.

Defendant insists that her claim for dower is superior to any lien for taxes due the Government or to any rights of said Wilson under the con-

veyance and agreement aforementioned, and defendant would state
30 that she is now prosecuting her suit for dower against said Wilson et als. in the chancery court of Lincoln County, Tennessee. Defendant admits the death of her husband and the qualification of C. S. Wilson and M. D. Hampton as his administrators, etc.

Having fully answered she prays to be dismissed, &c.

ALICE W. ALLEN.

Sworn to and subscribed before me October the 23d, 1878.

F. P. FULTON,
Justice of the Peace of Lincoln County, Tenn.

Answer of minors.

Filed Ap'l 2d, 1879.

LEWIS T. BAXTER, *Clk.*
By E. R. CAMPBELL, *D. C.*

Circuit court of the United States for the middle district of Tennessee.

THE UNITED STATES OF AMERICA
vs.
C. S. WILSON ET ALS. } In equity.

Answer of Fannie Lee, Maud, and Robert Allen, minors, by guardian ad litem Will A. Thoma, to the above-styled cause in said court filed against them et als.

And said minors, by their guardian as aforesaid, save to them-
31 selves full benefit of all exceptions as are usual to the form, character, and insufficiency of said bill, answering say they admit they are the children and heirs at law of E. L. Allen, dec'd; that they are minors and of such tender years that no knowledge is in them as to the facts set forth, and no information upon which to found any issue, and therefore, neither admitting or denying said bill in any part thereof, they demand such proof and ask the hon'l court fully to guard and protect their rights in the premises, and, having fully answered, pray, &c.

WILL A. THOMA,
G. a. litem.

Will A. Thoma makes oath that the above answer is true to the best of his knowledge, information, and belief.

WILL A. THOMA.

Sworn to & subscribed before me 2d day of Ap'l, 1879.

E. R. CAMPBELL,
Com'r.

Replication.

UNITED STATES
vs.
C. S. WILSON ET ALS. }

Repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exceptions which may

be had or taken to the manifold insufficiency of the answer of
32 the defendant, for replication thereunto say they aver, maintain, and prove their bill to be true, certain, and sufficient in law and equity; and that the answers of defendants are uncertain and insufficient to be specially replied to by these repliants; that any other matter or thing whatever in said answers contained, material or effectual, to be replied unto, confessed or avoided, traversed or denied is untrue, all of which matters and things these respondents are and will be ready to aver, maintain, and prove as the honorable court shall desire, and humbly pray as in and by their bill they have also prayed.

JAMES A. WARDER,
U. S. Att'y.

(69.)

Distress warrant. Revised Dec. 26th, 1876.

Warrant.

UNITED STATES OF AMERICA,
4th Collection District, State of Tennessee:

To W. B. NICKS, *Deputy Collector:*

Whereas in pursuance of the provisions of the acts of Congress of the United States to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes, the several persons and firms named in the list or schedule signed by me, and
33 hereto annexed, have become chargeable with, and are indebted to the United States for, the taxes assessed against them respectively in the amount set forth opposite the name of each, in the aforesaid list or schedule, together with the penalty and interest as therewith stated, amounting in the aggregate to three hundred and fifty-seven & $\frac{16}{100}$ dollars for neglect to pay said tax when the same became due; and whereas more than ten days have elapsed since payment of said taxes was demanded of each of said persons or firms, and whereas they still neglect and refuse to pay the same: You are hereby commanded to distrain upon and sell so much of the goods, chattles, and effects, including stock, securities, and evidences of debt of each of them, respectively, if any such can be found, as may be necessary for the payment of the taxes, penalties, and interest due and owing by them, respectively, as set forth in the aforesaid schedule, and also for the payment of such further sums as prescribed by the Commissioner of Internal Revenue under authority of law as shall be sufficient for the fees, costs, and expenses of such levies, respectively.

And you will safely keep all property so distrained, and do all things needful and necessary to be done in the premises, as required by law, before the sale thereof. But in case sufficient goods, chattels, and
34 effects cannot be found, then you are hereby commanded to seize and sell, in the manner prescribed by law, so much of the real estate of each of said persons and firms as may be necessary for the purposes aforesaid. And for so doing this shall be your warrant; of which make due service and make return to me at this office.

Witness my hand and official seal at Shelbyville, this 21st day of January, anno Domini 1876.

(Signed) J. W. C. BRYANT,
Collector of Internal Reve., 4th District of Tennessee.

Schedule.

Name.	Location.	Description of tax.	Amount of tax.	Penalty.	Total.	Remarks.
Alexander & Co ..	Lincoln Co., Tenn.	Tax on distilled spirits.	1,484 70	1,573 10	3,057 16	On July list, 1867.

By virtue of the power and authority vested in me W. B. Nicks, deputy collector, by this warrant, and sufficient goods, chattels, and effects of each of the parties respectively against whom it issued, and known under the firm-name, and style of Alexander and Co., not having been found as is sufficient and necessary for the payment of the taxes and penalties due and owing by them, as set forth in the above schedule, and also for the
35 payment of all necessary and reasonable fees and expenses of distraint and commissions, I, the said Nicks, hereby seize and levy this warrant upon the following-described property of E. L. Allen, one of the members of said firm, and upon all the right, title, claim, and interest of whatever character, legal or equitable, he has or may have or had at the demand of payment of said taxes, in and to the same, for the purposes aforesaid, demand of payment of said tax having been made of said firm and of each member thereof on the 2 January, 1869, and also on the 17 December, 1875. The property hereby seized and levied upon as aforesaid is as follows, to wit:

Lots of land-rights therein and thereon, all in the town of Fayetteville Lincoln County, Tennessee. One bounded on the North by James Vaughan's lot, on the east by the Shelbyville and Fayetteville, Tennessee, road, on the south by a street and the property of W. N. Wright, and on the west by a lot owned by W. N. Thompson & wife. Another lot bounded on the north by a street and the property of D. P. Holman, on the east by a lot of Alex. Johnson, on the south by a lot of Louis Bright, and on the west by the property of J. G. Woods. Also an undi-
36 vided one-half interest in the livery stable and ground now occupied by E. C. McLaughlin, and bounded on the north by the property of J. Y. Gill, east by the property formerly owned by R. Farqunham, south by a street and the property of C. S. Wilson, on the south by a street leading from the square to the rock bridge across Elk River. Also the house and lot now occupied by T. J. Carter as a saloon, and bounded on the North by a street, on the east by the property of B. F. Goodrich, south by the property of Tobe Bonner, west by the property occupied by Dean and Nunley, being the house and lot said E. L. Allen purchased from Donthart. Also a certain tract of land in said county and State on the Elk River formerly owned by Cornelius Allen, now deceased, and sold by the chancery court at Fayetteville, as lot No. 2 in the cause of W. H. Allen vs. R. S. Woodard, executor, and bounded as follows: Beginning at a pin oak standing on the south bank of Elk River, a northeast corner of Lot No. 1 of said Cornelius Allen's lands, and running from thence north with the north boundary line of lot No. 1 272 poles to an elm on the south branch of said river, a northwest corner of lot No. 1; thence
37 up the river with the various meanderings 716 poles to the beginning, containing 292 acres and 138 poles by survey bearing date November 12th, 1872, in said cause at Fayetteville.

All which said above-described property being covered by a lien in favor of the United States for the aforesaid taxes and penalties assessed against said parties for which demand was duly made as aforesaid. This 22d day of January, anno Domini 1876.

W. B. NICKS,
Deputy Collector.

I, William B. Nicks, deputy collector, as aforesaid, pursuant to the power aforesaid, under the foregoing and within warrant, have made an account of the goods and effects destrained and herein above fully described, a copy of which account, signed by me, was left with E. L. Allen, the owner of said goods and effects, with a note of the sum demanded and the time and place of sale, and I did forthwith cause a notification to be published in the Fayetteville Express, a newspaper published in Lincoln County, Tennessee, in which county said above distraint was made, and did also cause to be publicly posted three other notices, one at Fayetteville,
38 Tennessee, one at Mulberry, Tennessee, and one at Molino, Tennessee, and said articles did specify the articles distrained and the time and place for the sale thereof, and were made and bear date with the above levy the 22d day of January, 1876. And said notices did advertise said goods and effects to be sold, the town lots and all the goods and effects described in the within warrant, except the tract of land last described, on the 26th February, 1876, and said proposed sales were adjourned and postponed respectively to the 24 and 25th of March, 1876, and on which days said property was sold by me. The town property on said 24th M'ch was sold in the town where situate, at the court-house door, and nearer than five miles of the same, and the land last described in said distraint above was sold by me on said 25th March, 1876, at the forks of the road near Samuel Hamilton's, a place nearer than five miles of said land sold as aforesaid, on said 25th March, 1876. The date of the special order of the commissioners, D. D. Pratt, postponing sale, bears date Feb'y 21st, 1876, and the said notices were posted at the post-offices nearest
39 to the estate sold as aforesaid. And I did sell said estate, each parcel as described in the distraint warrant, separately, at public auction, offering the same at the minimum prices, including the expenses of levy, all charges of advertizing and officers' fees of ten dollars on each parcel, and all other expenses as follows, that is to say:

The minimum price of each parcel was as follows, to wit, taking the lots in the order in which they are above described:

Lot No. 1, at the minimum price of three hundred and sixty-four dollars ($364.00).

Lot No. 2, at the minimum price of two hundred and twelve dollars & fifty cents ($212.50).

Lot No. 3 at the minimum price of four hundred and fourteen dollars ($414.00).

Lot No. 4 at the minimum price of eight hundred and eighteen dollars ($818.00).

Lot No. 5, or the tract of land described in the said within levy, at the minimum price of thirteen hundred and fifty-one dollars and fifty-one cents ($1,351.85).

And these minimum prices resulted from the apportionment of the debt

due, the expenses, charges, and fees aforesaid to the several tracts and parcels of property aforesaid.

And no person having offered for said estate or any parcel thereof
40 the minimum price fixed thereon as aforesaid, I did, therefore, declare, according to law, the same and each parcel thereof separately, to be purchased by me for the United States.

March 25th, 1876.

W. B. NICKS,
Deputy Collector.

STATE OF TENNESSEE,
Davidson County, City of Nashville, ss:

I, W. M. Woodcock, collector of internal revenue for the 5th collection district of Tennessee, do hereby certify that the foregoing is a true and perfect copy of the warrant of distraint issued on Jan'y 21st, 1876, by J. W. C. Bryant, collector of internal revenue for the 4th district of Tennessee, against Alexander and Co., together with the return of W. B. Nicks, deputy collector thereon, as the same appears from the original papers remaining on file in my office.

In testimony whereof I have hereto set my hand and affixed the seal of my office at Nashville this 21st day of July, 1879.

[SEAL OF COLLECTOR.] W. M. WOODCOCK,
Collector 5th District of Tennessee.

41 *Depositions.*

Filed Oct. 18th, 1879.

LEWIS T. BAXTER, *Clerk*,
By E. R. CAMPBELL, *D. C.*

UNITED STATES
vs.
C. S. WILSON ET ALS. } *ss:*

Deposition of C. S. Wilson and J. D. Tillman, M. D. Hampton and N. J. George, taken by consent of parties in the presence of J. A. Warder, United States district attorney, and of J. W. Newman, attorney for the defendants, at the court-house in Fayetteville, Tennessee, on the 8th day of October, 1879.

C. S. WILSON, being first called and sworn according to law, deposes and says as follows:

I executed the paper dated Jan'y 14th, 1876, a copy of which is filed herewith, marked Exhibit A, to this deposition, the original being part of the record of a suit pending in the chancery court of Lincoln County. The debts named in said instrument, on which I am represented therein as security of E. L. Allen, were all bona fide debts. I have paid off all the balance on the $1,000.00 note therein referred to. I paid all the $450
42 note. I have not paid the $400 note due Dr. Martin, but am still bound for it. I have paid about $193.00 on the Wyatt note, the remainder thereon having been paid by E. L. Allen.

E. L. Allen's estate is thought to be badly insolvent. I am one of the administrators of his estate, and its insolvency has long since been suggested

in the county court of Lincoln County. The $450.00 note was paid in the manner and at the times indicated in a copy of J. B. Morgan's receipt, herewith filed and marked Exhibit B to this deposition, the original being a part of the records in a case now pending in the chancery court of Lincoln County. I deposited the money in the bank to pay the balance of the $1,000.00 note ninety days before Allen's death, and on the day of Allen's death I went to the bank and directed it to be applied to the payment of the debt. The $193.00 on the Wyatt debt I have paid since the death of Allen. On the day that I executed said agreement, nor at any other time, did I agree in any manner to relinquish or abandon any lien or right which I might have on any of the property included in the deed from said Allen to me.

(District attorney excepts to the competency of last answer.)

43 I had several conversations with E. L. Allen, wherein here cognized my right to file a bill to enforce my lien on the Donthil house and lot, and to reimburse myself because of my having paid off the $450 note heretofore spoken of in this deposition as Allen's security; he said he had an agreement with J. W. Newman by which Newman was to attend to all of his lawsuits for half fees. That he would see Newman and get him to file the bill to enforce my lien so that it would not cost me anything in the way of attorneys' fees and promised me that he would pay Newman the fees.

After Allen executed to me his deed of Jan'y 14th, 1876, I ascertained that one reason why he was so anxious to have me enforce my lien was that he wanted me to get ahead of the United States Government on the claim for which the bill was filed in this cause. Allen regarded said United States debt as a grossly unjust debt. At the time Allen executed his deed to me of January 14th, 1876, I did not know of the existence of such a debt as the one said to be due the United States Government.

44 I herewith file a copy of the $450.00 note that I paid off, the original being a part of the record in the chancery court of Lincoln County, Tennessee, said copy being marked Exhibit C to this my deposition.

As to the half interest in the livery stable referred to in complainants' bill it was sold after Allen's death as a part of the estate of Garland Miller, deceased, under a decree of the county court of Lincoln County, for a balance of unpaid purchase-money due from Allen and others for cash to the highest bidder free from the equity of redemption, and was purchased by myself and my co-defendant Mr. M. D. Hampton in our own right, and we have since sold it to John Y. Gill.

(Excepted to by district attorney because the record is the best evidence.)

My purchase on the 14th of January, 1876, from Allen was free from fraud against the Government and all the world besides, and it was bona fide and for the purposes stated in the deed of that date.

I was solvent at the time that Allen executed the deed heretofore mentioned and now solvent, and worth about ($25,000.00) twenty-five thousand dollars now, after my liabilities are paid.

45 The lot known as No. 4 in complainants' bill, is the lot for which the note of E. L. Allen and myself as security, and marked Exhibit C to this, my deposition, was given, and which I have paid as stated in a former part of my deposition. The lots deeded to me by Allen

on the 14th day of January, 1876, were not worth any more than what I contracted to give for them in said deed. Those lots are now worth about sixteen or seventeen hundred dollars in the aggregate.

Allen had at the time of the conveyance of the 4 lots, heretofore mentioned, of Jan'y 14th, 1876, some mules, horses, wagon, and hogs, but I do not remember how many; he had a lot of whiskey at Pitts & Co. still house. I do not remember the number of barrels, but it was worth from $1,000 to $2,000.

He had an interest in the law partnership of Newman and Allen, from $2,000 to $4,000. He had farming tools on two small farms of about 150 or 200 acres altogether.

Cross-examined:

The interest he, E. L. Allen, had in this whiskey, above mentioned, was not in a partnership. The interest he had in the firm of Newman and
46 Allen was in notes and accounts due for lawyers' fees. In a settlement or partial settlement of Newman and Allen matters Allen's estate fell in debt to Newman between six and eight hundred dollars. Allen was killed the 7th of March, 1877. About two hundred and fifty dollars is all the property that has come into the hands of the administrators of E. L. Allen. At the time of Allen's death he was badly insolvent. I took possession of the houses and lots Allen conveyed to me on the 14' Jan'y, 1876, conducted the renting and collected the same immediately after the sale to me. The livery stable since Allen sold me his one half interest has been renting for about two hundred and fifty dollars a year. The Donthut house and lot rented for about one hundred and fifty dollars a year. The cabin and lot No. 2 rented for about $25.00 to $48.00 a year. The $450.00 note spoken of in the agreement of Jan'y 14th, 1876, as due the First National Bank at Fayetteville is the Donthut note of which Exhibit C is a copy.

47 Re-examined:

I filed a bill in the chancery court at Fayetteville, Tennessee, after I paid off the Donthut note to enforce the lien for purchase-money, and obtained a decree from which the widow of Allen appealed to the supreme court of Tennessee on the question of dower.

(Excepted to by district attorney on the grounds that the record is the best evidence.)

On Jan'y 14th, 1876, Allen was regarded as pressed for money, but solvent, and so I regarded it.

And further this deponent saith not.

C. S. WILSON.

Sworn to and subscribed before me this Oct. 8th, 1879.

JAMES W. GOODWIN,
Commissioner U. S. Circuit Court, Middle District of Tennessee.

M. D. HAMPTON, being next called and sworn according to law, deposes and says, as follows:

I am one of the administrators of E. L. Allen; I am and was
48 on the 14th January, 1876, cashier of the Lincoln Savings Bank at Fayetteville, Tennessee; as such it was my business to look into

the solvency of parties who did business in this community and with our bank. E. L. Allen's transactions with the bank from 1870, a business amounting to fifty or sixty thousand dollars, up to the 14th of January, 1876. I regarded E. L. Allen as solvent, though he was not always punctual. His credit was good up to the time the Government levied the distress warrants referred to in complainants' bill upon the lots conveyed to Wilson.

Lot No. 3 in complainants' bill was sold to enforce the vendor's lien in favor of the Garland Miller's estate, and I and C. S. Wilson became the purchasers thereof at said sale. It was sold to the highest bidder for cash. We took a deed for it, and sold it to John Y. Gill afterwards. The buying of the livery stable at said sale by C. S. Wilson and myself and its sale to John Y. Gill were trades of a bona fide character and without fraud or intention of defrauding the Government or any individual.

(District attorney excepts to the last answer on the grounds that the records is the best evidence.)

The Ewing claims filed against E. L. Allen's estate in the county
49 court of Lincoln County has been all settled by set-offs. These claims were filed in the names of Nathaniel Baxter, clerk and master of chancery court at Nashville. My answer to the bill filed in this case is correct in all respects.

Cross-examined:

E. L. Allen executed to me a mortgage or a deed of trust on his mules and live stock and the registered instrument will show the true date.

(Defendant excepts to the cross-examination on the grounds that the record is the best evidence.)

And further this deponent saith not.

M. D. HAMPTON.

Sworn to and subscribed before me this, Oct. 8th, 1879.

JAMES W. GOODWIN,
Commissioner U. S. Circuit Court, Mid. Dist. Tenn.

N. J. GEORGE, being next called and sworn according to law, being a witness for the Government, deposes and says, as follows:

I am forty years of age, was last January. I am a practicing attorney at the Fayetteville bar. I was attorney for W. B. Nicks, deputy United States revenue collector, at the time he made the levy of a distress warrant on the property of E. L. Allen which Allen had conveyed to
50 C. S. Wilson. At that time I investigated Allen's condition as to property, or rather Nicks, and I investigated Allen's property which was subject to the levy of the warrant, and I will state it as my recollection now that we carefully investigated and sought by every proper means to ascertain all the property of Allen which could be subjected to the levy of said distress warrant. My best recollection now is that said distress warrant was levied on all the property of Allen which could be reached, and I remember now I thought at first that the property he conveyed to Wilson was not subject to the levy, but after investigating the matter I concluded it was. I wrote the levy for Nicks as his attorney,

and feel almost certain at this time, from what I remember about the matter, that if we had been able to find any other property of Allen than that upon which we levied, it also would have been levied upon. Mr. W. B. Nicks is reputed to be dead. I cannot state positively, of my own knowledge, whether E. L. Allen was solvent or insolvent at the time I wrote said levy. But it was my information then that nothing could be made out of Allen by execution at law. My best recollection now is that Allen's conveyance to Wilson included all the property of Allen's
51 subject to execution [and my recollection now is that I advised Nicks at first that even that property was not subject to the levy of the warrant, but after investigating the matter I found that the Gonernment had a lien upon the property prior to Allen's conveyance]. I now remember that Allen had purchased land from the chancery court at Fayetteville, but there was a lien on it for the purchase-money prior to the Government lien, and therefore did not advise a levy on that land.

(All in brackets in the above examination objected to by def'ts for incompetency. 1st, because it gives a conversation between witness and Nix which was not in the presence of Allen or defendants. 2d, a portion of it the mere opinion of witness.)

Cross-examined:

When I say in my examination in chief that my best recollection now is that Allen's conveyance to Wilson included all the property of Allen subject to execution, I mean it is my recollection now that Nicks and I found no other. He might have had other property which we did not and could not find. I have said in my investigation in chief that
52 after investigating the matter I found the Government had a lien upon the property prior to Allen's conveyance. Of course that was my opinion as a lawyer.

[I think I am acquainted with the general character of M. D. Hampton and C. S. Wilson, and from what I know of their general character I can say it is good in the community in which they live. From that general character and what I know of it I would give them full faith and credit in a court of justice.]

(The complainants except to all of the foregoing answer contained in brackets as incompetent.—Warder.)

I was not on intimate terms with E. L. Allen about the time said levy was made and as I now remember for some time before that. Do not know how long.

[I do not know whether M. D. Hampton had a better opportunity of knowing Allen's pecuniary condition than I have, but as he was cashier of a bank at which I was informed Allen dealt, I suppose he had. It was my understanding that Wilson and Allen were intimate and I suppose he knew much more than I did.]

(Complainant excepts to all the foregoing answer included in brackets.—Warder.)

Re-examined:

Allen and I both resided in Fayetteville and we were both mem-
53 bers of the Fayetteville bar.

Cross-examined:

I think Allen was not in the active practice of law when the levy was made.

And further this deponent saith not.

N. J. GEORGE.

Sworn to and subscribed before me Oct. 8th, 1879.

JAMES W. GOODWIN,
Commissioner U. S. Cir. Court Mid. Dist. of Tenn.

It is agreed that the copies of the exhibit attached to the deposition of C. S. Wilson are true copies, and the original being part of the record of the chancery court, their productions are waived and it is agreed that the copies may be read without further certificate.

WARDER, *for Compl't.*
J. W. NEWMAN, *for De'fts.*

JAS. D. TILLMAN, a witness for complainant, being next called and sworn according to law, deposes and says as follows:

I am thirty-seven years of age; I live at Fayetteville, Tennessee, and am an attorney-at-law and a bank director; I knew E. L. Allen in his lifetime; I think that E. L. Allen was insolvent on the 14th day of January, 1876, and I think the conveyance to C. S. Wilson, of
54 January 14th, 1876, covered all of his interests in real estate. Allen handled a good deal of money about that time and before that time, but I regarded him as insolvent and do not believe much money could have been made of him by execution.

Cross-examined:

I do not remember to have seen any legal definition of insolvency. My statement above in my examination-in-chief when I say that I regarded him as insolvent, is based upon my individual and personal knowledge of him and his condition and at the time mentioned. I believe that every man who gave him credit without security could rely alone upon his personal integrity and his chances for life and health. I had no personal knowledge of all his pecuniary transaction'. I do not know what proportion of his pecuniary transactions I had a personal knowledge of, but he frequently applied to me for a year or two before his death to aid him in getting money, and on one occasion he applied to me to become his surety for a thousand dollars, or about that amount, which I declined to do. He made this, I know, before the 6th day of March, 1875. I have gone men's security for a thousand dollars but not very often. I think
55 that E. L. Allen had ceased to do business with the bank (the First National Bank of Fayetteville), of which I was then and now a director, for one year or more before his death. If after January 1st 1876 he (E. L. Allen) did all his business through Lincoln's Savings Bank, of which M. D. Hampton was cashier, then M. D. Hampton ought to have known more about his pecuniary condition than I did, as I had not the same interest or motive for keeping myself informed.

C. S. Wilson had more interest and motive, and more opportunities for knowing, about January 1st, 1876, the pecuniary condition of E. L. Allen, than I did. I think that E. L. Allen was engaged in the wholesale liquor business and farming during the year 1876.

I am acquainted with the general character of C. S. Wilson and M. D. Hampton in the community in which they live, and from their character I would give them full faith in a court of justice, and they are recognized as men of excellent business qualifications and of business integrity.

And further this deponent saith not.

J. D. TILLMAN.

Sworn to and subscribed before me this 16th Oct., 1879.

JAMES W. GOODWIN,
U. S. Commissioner.

56 *Exhibit A to C. S. Wilson's deposition.*

FAYETTEVILLE, TENN., *Jan'y* 14, 1876.

Whereas E. L. Allen has this day conveyed to me by deed, absolute on its face, three lots in the town of Fayetteville, and his undivided half interest in the livery stable now occupied by E. C. McLaughlin, for the consideration of two thousand dollars.

This is to show that said conveyance was made for the purpose of securing and idemnifying me against loss as his security on two notes to the First National Bank of Fayetteville, one for $1,000.00 and the other for $450, and one to W. B. Martin for $400, and one to Richard Wyatt for $600, which indemnity is to extend to the renewal of said notes or any part thereof, and when said notes are paid off I am to reconvey said lots and said one-half undivided interest in said livery stable to said E. L. Allen.

Witness my hand and seal.

C. S. WILSON.

57 *Exhibit B to C. S. Wilson's depositions.*

Received of C. S. Wilson and S. C. Heiph one note payable to the 1st National Bank, at Fayetteville, Tenn., for four hundred and ninety four dollars and fifty five cents. Said note is to satisfy a judgment that said bank obtained against E. L. Allen, principal, C. S. Wilson, security, and S. C. Hipsh, stayor, rendered by G. B. McKenzie, J P., on the 10th day of March, 1876, also sixteen dollars and fifteen cents in money The above amount is in full of principal, interest, and cost of said cause. This Nov. 25th, 1876.

J. B. MORGAN,
Dept. Sheriff.

58 *Exhibit C to C. S. Wilson's deposition.*

On or before the 12th day of December, 1875, we or either of us promise to pay R. S. Donthat, four hundred and fifty dollars with interest after maturity until paid at the rate of 10 per cent. per annum, being for balance of the purchase-money for a house and lot this day purchased from him by E. L. Allen, this 16th day of February, 1875.

E. L. ALLEN.
C. S. WILSON,
Security.

Transcript.

Filed Oct. 20th, 1879.

LEWIS T. BAXTER, *Clk.*

G. B. MILLER ET ALS.
vs.
W. G. MILLER ET ALS. } Transcript.

Clerk's fee $15.00. Paid Oct. 18th, 1879, by C. S. Wilson.

P. D. BOYCE, *Clk.*

In the circuit court of the United States for the middle district of Tennessee.

UNITED STATES
vs.
C. S. WILSON ET ALS.

59 Filed by defendants as evidence in the above cause, and compl'ts solicitor notified thereof, Oct. 20, 1879.

LEWIS T. BAXTER, *Clk.*

To the Hon'l H. C. Cowan, judge of the county court of Lincoln County, Tenn.

G. B. MILLER, JR., R. R. WILLIAMSON AND WIFE, Sarah J. Williamson and Wm. T. Ross and wife, Anna W. Ross,
vs.
WILLIE G. MILLER AND PAULINE MILLER, citizens of said Lincoln County, both minors, and George B. Boyles, &c., of D. B. Miller, dec'd., defendants.

Complainants would respectfully show unto your honors that Garland B. Miller, sr., departed this life many years ago in said county of Lincoln, after having made and published his last will and testament, which was duly probated and admitted to record by your honorable court at its term 18 , and Mrs. Sarah R. Miller, the executrix named in said will, gave bond and duly qualified as the executrix thereof.

That said Sarah R. Miller proceeded to wind up said estate, and did sell the personalty and a portion of the realty, and paid off all the
60 debts against said estate except a very few, and said Sarah R. Miller departed this life, and one Geo. B. Boyles gave bond and qualified as administrator de bonis non with the will annexed on said estate and has sufficient assets in his hands to pay off all the outstanding debts against said estate.

That said Garland B. Miller left him surviving his widow, said Sarah R. Miller, who has departed this life as aforesaid, and the following children, viz: Garland B. Miller, Sarah J., who has since intermarried with said R. R. Williams, Anna W., who has since intermarried with said Wm. T. Ross; Willie G. Miller and Pauline Miller, said last two being

minors, also a son, Thomas K. Miller, who died before his mother, and under said will has no interest in said estate.

Complainants would now show unto your honor that said Miller died seized and possessed of certain realty in the town of Fayetteville, Lincoln County, Tennessee, being lot No. 2, in the plan of said town, except a portion sold off heretofore, and now owned by me, Thomas Hines; said lot fronts about 76 feet 8 inches on the public square, and extends 262½
61 feet along the street leading to the stone bridge to alley, and is bounded on the east by the lot of S. A. Farquaharson. Said lot has a brick building extending along the entire front on the square, and several small brick buildings along the street front, and a livery stable on the southwest corner of the same. Said ground and stable being leased by said Sarah R. Miller in her lifetime for ten years, and about seven years of said lease being yet to run, said lease or a copy of the same will be shown to the court on the hearing if required. Complainants charge that from the character of the improvements on said lot, and the size and situation of said lot itself, it is not susceptible of partition among the heirs and legatees of said Miller, and therefore insists that the same should be sold for division, and they respectfully ask of the court to have said lot divided into business lots for sale.

The premises considered, complainants pray that the parties named in the caption be made parties defendant to this bill; that S'p'a and copy of bill issue for said defendants; that guardian ad litem be appointed for said minors; that they be required to answer, &c.; that upon a hearing your honor will decree a partition of said lot amongst said heirs if sus-
62 ceptible of the same, and, if not, will decree a sale of same for division, and for such other and further relief as the nature of the case may require.

BOYLES & BURMAN, *Sol's.*

Wm. T. Ross makes oath in due form of law that the foregoing bill is true to the best of his knowledge, information, and belief.

W. T. ROSS.

Sworn to & subscribed before me Aug. 27, 1872.

JNO. Y. GILL, *Cl'k.*

Filed Aug. 27, 1872.

JNO. Y. GILL, *Clerk.*

Know all men by these presents that we, G. B. Miller, jr., R. R. Williamson, Wm. Thomas Ross, and George B. Boyles, all of Lincoln County, and State of Tennessee, are held and firmly bound to Willie G. Miller, Pauline Miller, and G. B. Boyles, adm'r of G. B. Miller, dec'd, in the sum of two hundred and fifty dollars and cents, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, firmly, and severally by these presents. Sealed with our seals, and dated this 27th day of August, 1872.

The condition of the above obligation is such that whereas the above bound G. B. Miller, jr., R. R. Williamson, W. T. Ross, &c.,
63 filed in the office of the clerk of the county court at Fayetteville, Tennessee, their bill in equity against the said Willie B. Miller & others. Now, if the said G. B. Miller & others shall well and truly prose-

cute said bill with effect, or in case of failure therein shall pay and satisfy all such judgments and decrees as shall be rendered against them in the premises, then the obligation to be void; otherwise to remain in full force and virtue.

G. B. MILLER, JR. [SEAL.]
R. R. WILLIAMSON. [SEAL.]
WM. THOS. ROSS. [SEAL.]
BOYLES & BURMAN. [SEAL.]
P'r att'ys, BOYLES & BURMAN.

STATE OF TENNESSEE:

To the sheriff of Lincoln County, greeting:

You are hereby commanded to summon Willie G. Miller, Pauline Miller, and Geo. B. Boyles, adm'r of G. B. Miller, dec'd, personally to appear before the worshipful county court, at the court-house in Fayetteville on the first Monday in September next, to answer a bill in equity, exhibited in our said court by G. B. Miller, jr., & others, complainants, against Willie G. Miller, & others, defendants, and this you shall in no wise omit under the penalty prescribed by law, and have you then and there this writ.

64 Witness, Jno. Y. Gill, clerk of said court, at office in Fayetteville, the first Monday in August, 1872.

JNO. Y. GILL,
Clerk.

(Endorsed:) Issued Aug. 27th, 1872. Jno. Y. Gill, clerk.

Came to hand same day, issued and executed by summoning all the within-named parties, and delivered copy of bill to Willie G. Miller, this Aug. 28th, 1872.

H. B. MORGAN,
Sheriff.

I acknowledge service of within s'p'a, and waive copy of bill.

GEO. B. BOYLES,
Adm'r, &c.

The separate answer of Geo. B. Boyles, adm'r of G. B. Miller, sr., dec'd, to a bill heretofore filed against him and others, by G. B. Miller, jr., & others.

This respo't, saving and reserving to himself the usual benefit of exceptions, &c., for answer to said bill, says that he admits the death of G. B. Miller, and Sarah R. Miller, and his qualification as adm'r, &c., upon said G. B. Miller's estate.

That he returned an inventory of all the personalty that came into his hands, and within his knowledge, to which he refers for amount and character of assets, and he would state that the debts against said estate

65 as he is informed amount to but very little, not exceeding a few hundred dollars. He will file a copy of his inventory if required by this honorable court on the hearing. He is willing to admit, so far as

he is informed and believes, that no portion of proceeds of said property sought to be sold in this cause is necessary to pay debts.

Having fully answered so far as he is advised it is material for him to answer, he prays to be hence dismissed, &c.

GEO. B. BOYLES,
Adm'r, &c.

Geo. B. Boyles makes oath in due form of law that the foregoing answer is true, to the best of his knowledge, information, and belief.

GEO. B. BOYLES.

Sworn to & subscribed before me Sep. 2d, 1872.

JNO. Y. GILL, *Clerk.*

Filed Sept. 2d, 1872.

JNO. Y. GILL, *Clerk.*

STATE OF TENNESSEE:

At a county court began and held for the county of Lincoln, in said State of Tennessee, at the court house in the town of Fayetteville, on the first Monday in September, the same being the 2d day of said month, in the year of our Lord one thousand eight hundred and seventy-two, present and presiding the Hon'l H. C. Cowan, judge of said court, and
66 H. B. Morgan, sheriff of said county, and Jno. Y. Gill, clerk of said court, the following proceedings were had:

SATURDAY MORNING, *Sept. 14th*, 1872.

Court met pursuant to adjournment.

Present and presiding the honorable H. C. Cowan, judge of the county court of Lincoln County, Tennessee, and John Y. Gill, clerk of said court.

G. B. MILLER ET ALS.
vs.
W. G. MILLER ET ALS.

In this cause it appearing to the court that the def'ts, William G. and Pauline Miller, are minors, and have no regular guardian in the State of Tennessee, and that they have been regularly served with process more than five days before the present term of this court, it is therefore ordered by the court that Sam'l W. Cammack be appointed guardian ad litem to answer and defend for said minors.

G. B. MILLER ET ALS.
vs.
W. G. MILLER ET ALS.

This cause coming on to be further heard on bill and answer, and it appearing to the court that Garland B. Miller departed this life
67 many years ago, after having made and published his last will and testament, which was duly probated and admitted to record by this hon'l court; that Sarah R. Miller gave bond and duly qualified as executrix of said will; that she has departed this life, and that George B. Boyles gave bond and duly qualified as administrator, &c., upon said will; that said Garland B. Miller left surviving said children and leg-

atees, viz, Garland B. Miller, jr., Sarah J., who has since intermarried with R. R. Williams, Anna W., who has since intermarried with Wm. T. Ross, Willie G. Miller, and Pauline Miller, and also Thomas K. Miller, who departed this life several years ago, before said Sarah R.; that said Miller died seized and possessed of certain realty situated in the town of Fayetteville, particularly set out and described in said bill; but it does not appear to the court whether there is sufficient personalty to pay off the outstanding debts against said estate, nor whether said property is susceptible of division amongst said heirs and legatees, nor what the same is worth.

It is therefore ordered by the court that the clerk take proof and report—

1st. Whether there is a sufficient amount of personality to pay
68 the debts against said estate.

2d. Whether said realty is susceptible of partition amongst those entitled thereto.

3d. What said property is worth on a credit of one and two years with twenty per cent. in cash. The clerk will also report whether said property ought to be divided for sale.

4th. Whether all the heirs of Garland B. Miller are properly before the court.

The answer of W. G. Miller and Pauline Miller, infants, under the age of twenty-one years, by S. W. Carmack, their guardian ad litem, to the bill of complaint of G. B. Miller et als. filed against them in the county court of Lincoln.

Respondents, answering by their said guardian, say: They are infants, respectively of the age of fourteen and twelve years or thereabouts, and they therefore submit their rights and interests in the matter in question in this cause to the protection of this honorable court.

And now, having answered, pray to be dismissed with their reasonable costs, &c.

S. W. CARMACK,
Guardian ad litem, &c.

Sworn to & subscribed before me September 4, 1872.
JNO. Y. GILL, *Clk.*

69 G. B. MILLER ET ALS.
vs.
W. G. MILLER ET ALS.

Interrogatories to be propounded to witnesses in the above case under order of reference before the clerk:

1. Are you acquainted with the Miller block on the southwest corner of the square in Fayetteville?

2. Are all the Miller heirs before the court in this cause?

3. Is said Miller block susceptible of fair division or partition amongst said heirs?

4. Is it advantageous to said minors and parties in interest that said real estate should be sold for division?

5. Would it be for the advantage of the parties in interest that said

block should be divided into lots for sale? If so, how should it be divided?

6. What would said lots be reasonably worth on a cash payment of twenty per cent. and the balance in one and two years, taking into consideration the incumbrance of the lease in valuing the livery-stable lot?

BOYLE & BURMAN, *Sol's.*

G. B. MILLER ET ALS.
vs.
W. G. MILLER ET ALS.

70 Said J. A. ALBRIGHT, being first duly sworn, deposes as follows:

Ans. to int. 1. I am.

Ans. to int. 2. They are so far as I know.

Ans. to int. 3. I think it is not; I think it is impossible to divide it into five equal shares.

Ans. to int. 4. I think it would be to the manifest advantage of the parties in interest that said block should be sold for division; because the buildings on said block have got out of repair considerably, and actually need work now, and my opinion is that they will continue to grow worse still, unless there is a considerable outlay spent at once in repairs, and the buildings on said block are not conveniently or advantageously arranged for renting; almost the entire improvements on said block are on one corner of it, being on the southwest corner of the public square.

Ans. to int. 5. I think it would be of advantage to divide said block for sale. I think it might be advantageously divided as follows:

1st. Make the block fronting on the square one lot of 76 feet 8 inches front by 88 feet deep on the street, or I believe it would be better still to divide the front on the square into three lots, running back the same depth.

71 2d. Make six lots fronting on the street of 23 feet front each by 160 feet in depth.

3d. Make the livery-stable lot one lot of 60 feet front by 160 feet in depth; making in all eight or ten lots.

Ans. to int. 6. Upon the terms mentioned in the interrogations I think the said lots referred to in the interrogatories are reasonably worth as follows:

1st. For the corner of the square with the present tin shop, &c., $2,000.

2d. For the two other lots on the square, of same front, $1,250 each.

3d. For the six lots fronting on the street I think $325 or $350 each would be a low estimate.

4th. For the livery-stable lot, taking into consideration the incumbrance of the lease, I think all the interest of the Miller heirs ought to be worth $1,000. And further saith not.

J. A. ALBRIGHT.

Sworn to and subscribed before me Nov. 20th, 1872.

JOHN Y. GILL, *Clk.*

Said M. W. WOODARD, being next duly sworn, deposes and says:

I agree with the answers of J. A. Albright to the foregoing interrogatories. I think the division is probably as good as could be made.
72 I think the valuation is full high, considering the condition of the property. And further he saith not.

M. W. WOODARD.

Sworn to and subscribed before me Nov. 20th, 1872.

JNO. Y. GILL, *Clk.*

Said D. P. HOLMAN, being next duly sworn, deposes as follows:

I have just heard the deposition of J. A. Albright read, and I agree with him entirely in his answers to the four first interrogatories.

Ans. to int. 5. It is to the manifest advantage of the parties in interest that the property should be sold for division amongst the heirs. It should be divided as follows, in my opinion:

1st. Begin at the corner and go as far east as the dividing wall between the barber shop and Woods and Martin's office, and thence south to a point due east of the north wall of the kitchen, and let this be division No. 1.

2d. Make the balance of the square go back the same depth for lot No. 2.

3d. Divide the balance on the street into four lots down to the livery-stable lot, so as not to divide the rooms on said street, and then let the livery-stable lot be a fifth lot. All of said lots to run back to Farquaharson's fence.

73 This is the most advantageous division, in my opinion, of said premises.

Ans. to int. 6. I think lot No. 1 would be reasonably worth $1,500. Lot No. 2 the same. The three first lots on the street having the rooms I think are worth $400 each, and for the vacant lot $200, and the livery-stable lot $800.

And further saith not.

D. P. HOLMAN.

Sworn to subscribed before me Nov. 20th, 1872.

JNO. Y. GILL, *Clk.*

GEO. B. BOYLES, being next duly sworn, deposes as follows:

I agree with the said J. A. Albright in his answers to the four first interrogatories. I think the division of D. P. Holman would be more advantageous to the heirs, but I think a medium between the two valuations would be more correct. I am adm'r of G. B. Miller, dec'd, and have qualified since the death of the executrix, Mrs. Sarah R. Miller. I have on hand the notes returned in my inventory as belonging to the estate, and have no knowledge of any amount of indebtedness. I don't think the indebtedness will amount to $500.

And further saith not.

GEO. B. BOYLES.

Sworn to & subscribed before me Nov. 20, 1872.

JNO. Y. GILL, *Clk.*

74 STATE OF TENNESSEE:

At a county court began and held for the county of Lincoln, in said State of Tennessee, at the court-house, in the town of Fayetteville, on the 4th day of said month, A. D. 1872. Present and presiding, the Hon. H. C. Cowan, judge of the county court of said county, and Jno. Y. Gill, clerk of said court, and W. A. Millard, sheriff of said county.

SATURDAY, *November 23d*, 1872.

Court met pursuant to adjournment. Present and presiding, the Hon'l H. C. Cowan, judge of the county court of Lincoln County, State of Tennessee, and Jno. Y. Gill, clerk of said court, and Jas. Davidson, constable of said county, &c., waited on said court.

The following proceedings were had, viz:

G. B. MILLER ET AL.
vs.
W. G. MILLER ET AL.

This cause coming on to be further heard on the report of the clerk made to the present term of this court, which is as follows:

To the Hon'l H. C. Cowan, judge of the county court of Lincoln County, State of Tennessee, presiding at Fayetteville, Tenn.

The undersigned, clerk of the county court of said county, would
75 report that, pursuant to an order of reference made at the September term, 1872, of your honorable court, directing the undersigned clerk to take proof and report—

1st. Whether there is a sufficient amount of personalty to pay off the debts against said estate;

2d. Whether said realty is susceptible of partition amongst those entitled thereto;

3d. What said property is worth on a credit of one and two years, with twenty per cent. in cash, and whether said property ought to be divided for sale;

4th. Whether all the heirs of Garland B. Miller are properly before the court—

He has taken the depositions of J. A. Albright, D. P. Holman, M. W. Woodward, and Geo. B. Boyles (the latter being the adm'r of G. B. Miller, dec'd), to which he refers, and from which he reports—

1st. That the indebtedness will not exceed $500, and that the personal assets in the adm'r's hands amount to much more than that.

2d. That owing to the condition of the buildings, &c., mentioned in the bill that they are not susceptible of an advantageous partition amongst those entitled to the same.

3d. That all the parties in interest are properly before the court.

4th. That it would be manifestly to the interest of those entitled
76 that said property should be sold for division among the heirs, and should be divided as follows for sale, the interest of the heirs requiring the same, and that the amount set opposite each lot would be a

reasonable price for the same if sold on a credit of one and two years, except the sum of 20 per cent. in cash, viz:

Lot No. 1. Fronting on the square, 47 feet, including the tin shop, Camigan & Higgins' office, and barber shop, 92 feet depth to the brick kitchen, $2,000.

Lot No. 2. Front on square, 29 feet and 6 inches, and 92 feet back, including Woods & Martin's law office, and the shoe shop, at $1,500.

Lot No. 3. Brick kitchen, front on street, 24 feet, running 160 feet back, $400.

Lot No. 4. Front size of room, on street, 17 feet 6 inches, depth 160 feet, $400.

Lot No. 5. Front on street, size of room, 36 feet, with depth 160 feet, at $400.

Lot No. 6. Front from lower room to livery-stable, lot 34 feet 6 inches, depth 160 feet, value at $300.

Lot No. 7. Livery-stable lot, 60 feet front, depth 160 feet, valued at $1,000.

All of which is respectfully submitted. Nov. 21, 1872.

JNO. Y. GILL, *Clk.*

To which report no exceptions being taken the same is in all things confirmed.

77 From which report and the records in this cause, it appearing to the court that all the heirs of said G. B. Miller, dec'd, are properly before the court; that said property referred to in the pleadings is not susceptible of partition amongst the parties in interest, but that it is manifestly to the interest of the said parties that said property should be sold for distribution;

It is therefore ordered, adjudged, and decreed by the court that Jno. Y. Gill, as special commissioner, proceed to expose said land to public sale, to the highest bidder, on the premises, after first giving notice as required by law, and also by printed hand bills, and will sell said property on a credit of one and two years, except the sum of ten per cent., which will be required in cash, and will sell in the said seven divisions or lots indicated in said report, but will not sell at less than the minimum fixed therein. He will report to the next term after making sale, taking bonds with two or more good and approved security, and will retain a lien on said property till all of the purchase-money is paid.

STATE OF TENNESSEE:

78 At a county court began and held for the county of Lincoln, in *in* said State of Tennessee, at the court-house, in the town of Fayetteville, on the first Monday of January, the same being the 6th day of said month, in the year of our Lord one thousand eight hundred and seventy-three, present and presiding the honorable H. C. Cowan, judge of said court, and John Y. Gill, clerk of said court, and W. A. Millard, sheriff of said county, the following proceeding, were had, viz:

FRIDAY MORNING, *January 17th*, 1873.

Court met pursuant to adjournment.

Present, the Hon. H. C. Cowan, judge of the county court of Lincoln County, Tennessee, and Jno. Y. Gill, clerk of said court.

G. B. MILLER ET ALS.,
vs.
W. G. MILLER ET ALS.

This cause came on to be further heard on the report of the clerk and the special commissioner which is in the following words and figures, viz:

To the hon. H. C. Cowan, judge of the county court of Lincoln County, Tennessee:

The undersigned, clerk and special commissioner in the above cause, respectfully reports that in obedience to a decree of this court, pro-
79 nounced at the November term, 1872, in this cause, he gave notice, as required by law and also by printed hand bill, of the time, place, and terms of the sale of lots mentioned in the pleadings; and according to said advertisement and notice he attended on the premises on Saturday the 21st day of December, 1872, and offered said lots for sale, upon the terms mentioned in the decree.

He first offered lot No. 1, when Charles A. Fulton, among others, became a bidder, and bid the sum of $3,000 for said lot, which being the highest and best bid, and more than the minimum upon said lot, the same was struck off to him; whereupon said C. A. Fulton paid the undersigned the sum of $300, the ten per cent., required in cash and executed his two notes, each for the sum of $1,350.00, due respectively at twelve and twenty-four months from the day of sale, payable to the undersigned, as clerk and special com'r, for the use of the heirs of Garland B. Miller, dec'd, with F. P. Fulton and Alfred S. Fulton as his securities.

He next offered lot No. 2, when Boyles & Burnam, among others, became bidders, and bid the sum of $1,500.00 for said lot, which
80 being the highest and best bid, and the minimum upon said lot, the same was struck off to them, whereupon said Boyles & Burnam paid the undersigned the sum of $150.00, the ten per cent. required in cash, and executed their two notes, each for the sum of $675.00, due respectively at twelve and twenty-four months from the day of sale, payable to the undersigned, as clerk & special com'r, for the use of the heirs of Garland B. Miller, dec'd, with J. C. Bright and L. P. Bright, as their securities.

He next offered lot No. 3, when Alexander Smith, among others, became a bidder, and bid the sum of $606.00 for said lot, which being the highest and best bid, and more than the minimum upon said lot, the same was struck off to him; whereupon said Alexander Smith paid the undersigned the sum of $60.60, the ten per cent. required in cash, and executed his two notes, each for the sum of $272.70, due respectively at twelve and twenty-four months from the day of sale, payable to the undersigned, as clerk and special com'r, for the use of the heirs of Garland B. Miller, dec'd, with D. M. Perkins and Rebecca L. C. Lester, per her attorney in fact, A. Smith, as securities.

81 He next offered lot No. 4, when Martha A. Fulton, among others, became a bidder, and bid the sum of $500.00 for said lot; the same was struck off to her; whereupon said Martha A. Fulton paid the undersigned the sum of $50, the ten per cent. required in cash, and executed her two notes, each for the sum of $225.00, due respectively at twelve and twenty-four months from the day of sale, payable to the undersigned, as clerk and special commissioner, for the use of the heirs of Gar-

land B. Miller, dec'd, with F. P. Fulton, C. C. McKinney, and Charles A. Fulton as her sureties.

He next offered lot No. 5, when J. A. Albright became a bidder, and bid the sum of $701.00 for said lot, which being the highest and best bid, and more than the minimum upon said lot, the same was struck off to him; whereupon said J. A. Albright paid the undersigned the sum of $70.10, the ten per cent. required in cash, and executed his two notes, each for the sum of $315.45, due, respectively, at twelve and twenty-four months from the day of sale, payable to the undersigned, as clerk and special commissioner, for the use of the heirs of Garland B. Miller, dec'd, with Thomas Baxter and A. W. Baxter as his securities.

82 He next offered lot No. 6, when J. A. Albright, among others, became a bidder, and bid the sum of $426.25 for said lot, which being the highest and best bid, and more than the minimum upon said lot, the same was struck off to him; whereupon the said J. A. Albright paid the undersigned the sum of $42.62½, the ten per cent. required in cash, and executed his two notes, each for the sum of $191.81½, due, respectively, at twelve and twenty-four months from the day of sale, payable to the undersigned, as clerk and sp'l com'r for the use of the heirs of Garland B. Miller, dec'd, with J. H. Burnam and John F. Baxter as his securities.

He next offered lot No. 7, when E. C. McLaughlin and Thomas J. Price, among others, became bidders and bid the sum of $1,000.00, which being the highest and best bid, and the minimum upon said lot, the same was struck off to them; whereupon the said McLaughlin and Price paid the undersigned the sum of $100.00, the ten per cent. required in cash, and executed their two notes, each for the sum of $450.00, due, respectively, at twelve and twenty-four months from the day of sale, payable to

83 the undersigned, as clerk and special com'r for the use of the heirs of Garland B. Miller, dec'd, with E. L. Allen and E. P. Reynolds as their securities.

Said sale amounts in the aggregate to $7,733.25.

All of said notes are deemed good and solvent, but the undersigned has retained a lien on said lots for the purchase-money.

He would further report that in dividing said block for sale a small lot was overlooked, which, for the sake of distinction, he will call lot No. 8, lying immediately south of the Hines lot, and bounded on the east by Mrs. Farquaharson, south by lot No. 3, and west by lot No. 2, and is about 12 feet wide by 83½ feet long.

Respectfully submitted.

JNO. Y. GILL,
Clerk and Sp'l. Commissioner.

DEC. 25, 1872.

To which report no exceptions being taken the same is in all things confirmed, and the clerk and special master will collect said notes as the same fall due and report his action to this court.

And it appearing from said report that lot No. 8 has not been sold, it is therefore ordered, adjudged, and decreed by the court that the clerk as

84 special commissioner proceed as speedily as possible to sell said lot at public sale to the highest bidder, on the premises, requiring ten per cent. in cash, and the balance to be paid in two equal install-

ments on the 21' day of December, 1873 and 1874 respectively, after giving notices as required by law.

It is further ordered that the clerk and special commissioner take proof and report what would be a reasonable fee to Boyles and Burnam for their services as attorneys in this cause and to S. W. Carmack for services as guardian ad litem.

The clerk and special commissioner will retain a sufficient amount to pay costs and attorneys' fees, and will distribute the balance to said heirs, one-fifth to each heir, to wit: G. B. Miller, Sarah Williamson, Anna W. Ross, Willie G. Miller, and Pauline Miller, but he will pay over the shares of the two minors to a regular guardian only, and in case no guardian applies therefor he will loan the same at ten per cent. per annum, taking notes and security as required by law, and report said notes to the court for approval.

G. B. MILLER ET ALS.
vs.
W. G. MILLER, ET ALS.

85 The depositions of G. W. Higgins and T. B. Kercheval, practicing attorneys at the Fayetteville bar, taken in pursuance to an order of reference made to the clerk, John Y. Gill (Jan'y term, 1873) to take proof and ascertain what would be a reasonable fee for Boyles and Burnam as attorneys and S. W. Carmack as guardian ad litem, for services rendered in this cause.

The said G. W. HIGGINS and T. B. KERCHEVAL, being first sworn according to law, deposing say as follows: That they have carefully examined the papers in the above cause, the amounts involved, and the amounts of professional labor performed and necessary to be performed by said attorney as guardian ad litem in winding it up, and are of opinion that two hundred and sixty-one and $\frac{99}{100}$ dollars to Boyles and Burnam as attorneys, and thirty dollars to S. W. Carmack, guardian ad litem, would be reasonable compensation for their services in this cause.

G. W. HIGGINS.
THOS. B. KERCHEVAL.

Sworn to & subscribed before me 31st day of January, 1873.
JNO. Y. GILL, *Clk.*

FRIDAY MORNING, *Jan'y 31st*, 1873.

Court met pursuant to adjournment.

Present and presiding, the Hon'l. H. C. Cowan, judge of the county court of Lincoln County, Tenn., and Jno. Y. Gill, clerk of said court.

86 G. B. MILLER ET ALS.
vs.
W. G. MILLER ET ALS.

This cause came on to be further heard on the report of the clerk, Jno. Y. Gill, &c., made to the present term, which report is in the following words and figures, viz:

To the Honorable H. C. Cowan, judge of Lincoln County court:

In obedience to an order of reference made at the January term, 1873, of the county court directing the clerk to take proof and report what would

be a reasonable fee to Boyles & Burnam for their services as attorneys and for S. W. Carmack as his services as guardian ad litem in this cause.

The undersigned reports that he has taken the depositions of G. W. Higgins and T. B. Kercheval, practicing attorneys at the Fayetteville bar, touching the matter to which he refers, and from which he reports that $261.99 would be a reasonable allowance to Boyles and Burnam and $30.00 a reasonable allowance to S. W. Carmack as guardian ad litem for their services in this cause.

All of which is respectfully submitted.

JNO. Y. GILL, *Clerk.*

Which report being unexcepted to is confirmed. It is therefore ordered by the court that the clerk and special com'r, Jno. Y. Gill, pay to
87 Boyles and Burnam said sum of $261.99 and to S. W. Carmack said sum of $30.00, taking and filing proper receipts for the same. All other matters reserved.

STATE OF TENNESSEE:

At a county court began and held for the county of Lincoln, in said State of Tennessee, at the court-house in the town of Fayetteville, on the first Monday in March, in the year of our Lord one thousand eight hundred and seventy-three, present and presiding the Hon'l H. C. Cowan, judge of the county court of Lincoln County, and Jno. Y. Gill, clerk of said court, and W. A. Millard, sheriff of said county, the following proceedings were had:

WEDNESDAY MORNING, *March 26th*, 1873.

Court met pursuant to adjournment.

Present the Hon'l H. C. Cowan, judge of the county court of Lincoln County, Tennessee, and Jno. Y. Gill, clerk of said court.

G. B. MILLER ET ALS.
vs.
W. G. MILLER ET ALS.

This cause coming on to be further heard on the report of the clerk and special commissioner, made to the present term, which is as follows:

88 To the Hon'l H. C. Cowan, judge of the county court of Lincoln County, State of Tennessee, presiding at Fayetteville, Tennessee.

The undersigned, as special com'r in above cause, would report that pursuant to a decree of your honorable court at the Jan'y term, 1873, in said cause, after giving notice by printed hand-bills more than 20 days, as required, &c., of the time, terms, &c., he attended on the premises on Saturday, the 8th day of March, and offered lot No. 8, Miller block, for sale to the highest bidder, when Alexander Smith, among others, became a bidder and bid the sum of sixty dollars on said lot, which being the highest and best bid on said lot, it was struck off to him at that bid. After paying the undersigned the sum of $6.00, the 10 per cent. required in cash, the said Smith executed his two notes, each for $27.00, and due, respectively, on the 21st day of Dec'r, 1873–'4, with R. S. C. Lester, by A. Smith, att'y in fact, payable to the undersigned, clerk and special commissioner, for the use of the heirs of Garland B. Miller, dec'd, which being deemed good and

sufficient, the undersigned would report that he retained a lien on said lot for the payment of the purchase-money.

Respectfully submitted, M'c'h 26th, 1873.

JNO. Y. GILL,
C'l'k & Sp'l Com'r.

89 To which report, no exceptions being taken, the same is in all things confirmed.

And it is ordered by the court that the special commissioner collect said notes as the same fall due.

STATE OF TENNESSEE:

At a county court began and held for the county of Lincoln, State of Tennessee (at the court-house), in the town of Fayetteville, on the first Monday in January, it being the 4th day of said month, in the year of our Lord one thousand eight hundred and seventy-five, present and presiding the Hon'l. N. P. Carter, judge, &c., and P. D. Boyce, clerk of said court, and W. A. Millard, sheriff of said county, the following proceedings were had:

TUESDAY MORNING, *January* 12, 1875.

Court met pursuant to adjournment.

Present and presiding the Hon. N. P. Carter, judge, &c., and P. D. Boyce, clerk of said court.

G. B. MILLER ET ALS.
vs.
W. G. MILLER ET ALS.

This cause coming on to be further heard on the report of the special commissioner made to the present term, which is as follows:

90 To the honorable N. P. Carter, judge of the county court of Lincoln County, presiding at Fayetteville.

The undersigned, former clerk of said court, and sp'l com'r in above cause, would respectfully report that on the 21st day of Dec., 1872, C. A. Fulton, with F. P. Fulton and A. S. Fulton, as his securities, executed his two notes for the purchase-money of lot No. 1, Miller block, sold in said cause, due at twelve and twenty-four months after date, payable to the undersigned, as clerk and special commissioner, for the use of the heirs of Garland B. Miller, dec'd, each for the sum of thirteen hundred and fifty dollars.

First note due Dec. 21, 1873		$1,350 00
Credit Jan'y 21, 1874	$400 00	
" " 24, 1874	100 00	
		500 00
Bal. principal		850 00
Int. to Jan'y 12, 1875		56 95
2d note due Dec. 21, 1874		1,350 00
Int. to Jan'y 12, 1875		4 95
Amounting in the aggregate, prin. and int		2,261 90

All of which remains due and unpaid.

The undersigned would further report that on said 21st day of December, 1872, Boyles and Burnam, with J. C. Bright and R. L. Bright as their securities, executed their two notes for the purchase money of lot No. 2 of said Miller block, due at twelve and twenty-four months
91 after date and payable to the undersigned, clerk and sp'l com'r for the use of the heirs of Garland B. Miller, dec'd, each for six hundred and seventy-five dollars.

First note, due Dec. 21, 1873, for		$675 00
Credit Jan'y 20, 1874	$100 00	
" Dec. 25, 1874	132 43	
		232 43
Bal. 1st note principal		442 57
Int. to Jan'y 12, '75		36 58
2nd note, due Dec. 21, 1874		675 00
Int. to Jan'y 12, 1875		2 47
Bal. principal and interest		$1,156 62

All of which is due and unpaid.

The undersigned would further report that on the said 21st day of December, 1872, Alexander Smith, with D. M. Perkins and R. L. C. Lester, per A. Smith, att'y in fact, as his securities, executed his notes for 2d installment purchase of lot No. 3 of said block, due at twenty-four months after date, payable to the undersigned as clerk and sp'l com'r for the use of the heirs of G. B. Miller, dec'd, for the sum of..... $272 00
Int. to Jan'y 12, 1875..... 99

$272 99

That on the 8th day of March, 1873, the said Alex. Smith executed his note with R. L. C. Lester, per att'y in fact, as security for 2d installment of lot No. 8, said block, payable to him as clerk, &c., for the use, &c., 21st Dec., 1874, for..... $27 00
Int. to Jan'y 12, 1875..... 09

Amounting in the aggregate to the sum of..... $300 08
92 All of which is due and unpaid.

The undersigned would further report that on said 21st day of Dec., 1872, Martha A. Fulton, with F. P. Fulton, C. C. McKinney and C. A. Fulton as his securities, executed her two notes for purchase-money of Lot No. 4 of said block due at twelve and twenty-four months after date payable to the undersigned as clerk and special com'r for use of heirs of G. B. Miller, dec'd, each for two hundred and twenty-five dollars.

1st due Dec. 21, 1873, for	$225 00
Int. to Jan'y 12, 1875	14 32
2d note due Dec. 21, 1874	225 00
Int. to Jan'y 12, 1875	82
Amounting in the aggregate to the sum of	$465 14

All of which is due and unpaid.

He also reports that on the same day (Dec. 20, 1872), J. A. Albright executed his two notes, one for 2d installment of Lot No. 5, with Thos. Baxter and A. W. Baxter as his securities, due at twenty-four months after date, payable to the undersigned for use, &c., heirs of G. B. Miller, dec., for $315 45
Int. to Jan'y 12, 1875..... ..... 1 15

Principal and interest $316 60
All due and unpaid.

93 2d note for 2d installment on Lot No. 6, with J. H. Burmaur and Jno. F. Baxter as his securities, due at twenty-four months after date and payable to the undersigned for use of heirs of G. B. Miller, dec'd, for the sum of $191.81½; int. to Jan'y 12, 1875, 70½, both amounting to, prin. and int., $192.52, all of which is due and unpaid.

He would also report that on the said 21st day December, 1873, E. C. McLaughlin and T. J. Price, with E. L. Allen and E. P. Reynolds as their note for 2d installment of lot No. 7, said Miller block, due at twenty-four months after date and payable to the undersigned for use of the heirs of G. B. Miller, dec'd for the sum of $450.00; int. on same to Jan'y 12, '75, 1.65, amounting in the aggregate to sum of $451.65, all which is due and unpaid.

The undersigned for the use, &c., therefore moves the court for judgment against the said C. A. Fulton & his sureties F. P. Fulton and A. S. Fulton for said amount of $2,261.90, principal & interest, &c., and against the said Boyles & Burnam and their sureties, the said J. C. and R. L. Bright for said sum of $1,156.62, principal and interest, &c., and the said Alexander Smith and his said sureties for said amount of $300.08, principal and interest, and against the said J. A. Albright and sureties, the said Thomas Baxter and A. W. Baxter, for said sum of $316.60, principal and interest, also against said Albright and his said sureties,

94 the said J. H. Burnam, and Jno. F. Baxter for said sum of $192.52 principal & interest, and also against said Martha A. Fulton & her sureties, the said F. P. Fulton and C. C. McKinney and C. A. Fulton, for said sum of $465.14, principal & interest, and also against the said E. C. McLaughlin and T. J. Price and their said sureties, the said E. L. Allen and E. P. Reynolds, for said sum of $451.65, principal & interest, and against said above parties for the cost of this motion, &c., all of which is respectfully submitted.

JNO. Y. GILL,
Former Cl'k & Special Commissioner.

To which report, no exceptions being taken, the same is in all things confirmed.

And it appearing to the court from said report, and from said notes exhibited, that Charles A. Fulton, F. P. Fulton, and A. S. Fulton are indebted to Jno. Y. Gill, special commissioner, &c., in the sum of $2,261.00, and that Boyles & Burnam, J. C. Bright, and R. L. Bright, are indebted to said Gill, special com'r. in the sum of $1,156.62, and that Alexander Smith, D. M. Perkins, and R. S. C. Lester are indebted to said Gill, special commissioner, &c., in the sum of $300.08, and that Martha A. Fulton, F. P. Fulton, C. C. McKinney, and C. A. Fulton are indebted to said Gill, special com'r, &c, in the sum of $465.14 and that J. A. Albright, Thomas

95 Baxter, and A. W. Baxter are indebted to said Gill, sp'l. com'r, &c., in the sum of $316.60, and that J. A. Albright, J. H. Burnam, and Jno. F. Baxter are indebted to said Gill, special com'r, &c., in the sum of $192.52, and that E. C. McLaughlin, T. J. Price, E. L. Allen, and E. P. Reynolds are indebted to said Gill, special com'r, in the sum of $451.65.

It is therefore ordered, adjudged, and decreed by the court that said Jno. Y. Gill, special commissioner, for the use of the heirs of G. B. Miller, dec'd, recover of said C. A. Fulton, F. P. Fulton, and A. S. Fulton said sum of twenty-two hundred and sixty-one dollars & ninety cents, together with the costs of this motion, for which let execution issue.

It is further ordered, adjudged, and decreed by the court that said Jno. Y. Gill, special commissioner, for the use of the heirs of G. B. Miller, dec'd, recover of said Boyles & Burnam, J. C. Bright, and R. L. Bright said sum of eleven hundred & fifty-six dollars and sixty-two cents, together with the costs of this motion, for which let execution issue.

It is further ordered, adjudged, and decreed by the court that said Jno. Y. Gill, special com'r, for the use of the heirs of G. B. Miller, dec'd, recover of said Alexander Smith, D. M. Perkins, and R. S. C. Les-
96 ter said sum of three hundred dollars and eight cents, together with the costs of this motion, for which let execution issue.

It is further ordered, adjudged, and decreed that said Jno. Y. Gill, special commissioner, for the use of the heirs of G. B. Miller, dec'd, recover of said Martha A. Fulton, F. P. Fulton, C. C. McKinney, and C. A. Fulton said sum of four hundred and sixty-five dollars and fourteen cents, together with the costs of this motion, for which execution may issue.

It is further ordered, adjudged, and decreed by the court that said Jno. Y. Gill, sp'l com'r, for the use of the heirs of G. B. Miller, dec'd, recover of said J. A. Albright, Thomas Baxter, and A. W. Baxter said sum of three hundred and sixteen dollars and sixty cents, together with the costs of this motion, for which let execution issue.

It is further ordered, adjudged, and decreed by the court that said Jno. Y. Gill, for the use of the heirs of G. B. Miller, dec'd, recover of said J. A. Albright, J. H. Burnam, and Jno. F. Baxter said sum of one hundred & ninety-two dollars and fifty-two cents, together with the costs of this motion, for which let execution issue.

It is further ordered, adjudged, and decreed by the court that said Jno. Y. Gill, sp'l com'r, for the use of the heirs of G. B. Miller, dec'd
97 recover of said E. C. McLaughlin, T. J. Price, E. L. Allen, and E. P. Reynolds said sum of four hundred and fifty-one dollars and sixty-five cents, together with the costs of this motion, for which let execution issue.

STATE OF TENNESSEE,
Lincoln County:

At a county court began and held for the county of Lincoln, at the court-house, in the town of Fayetteville, on the first Monday in July, the same being the 5th day of said month, in the year of our Lord one thousand eight hundred and seventy-five, present and presiding the Hon'l N P. Carter, judge of the county court of said county and State, and W. A. Willard, sheriff of said county, and P. D. Boyce, clerk of said court, the following proceedings were had.

MONDAY MORNING, *July 26th*, 1875.

Court met pursuant to adjournment.

Present and presiding Hon'l N. P. Carter, judge, and P. D. Boyce, clerk of said court.

G. B. MILLER & OTHERS
vs.
W. G. MILLER & OTHERS.

This cause coming on to be further heard on the report of special com'r made to the present term, which is as follows:

98 To the Hon'l N. P. Carter, judge of the county court of Lincoln County, presiding, at Fayetteville.

The undersigned former clerk of said court and sp'l commissioner in above cause would respectfully report that he has collected from J. A. Albright, the purchaser of lots Nos. 5 & 6, the sum of $525.01, amount in full of his second and last installments notes for said purchase-money for said lots Nos. 5 & 6, principal & interest to date. The principal of said two notes (jointly) amounting to the sum of (which is in full of his entire purchase)..... $507 26
Interest to July 21st, 1875.. ..... 17 75

Amounting in the aggregate to..... 525 01

All of which he holds subject to the orders of the court.

Respectfully submitted.

JNO. Y. GILL,
Sp'l Com'r.

To which report no exceptions being taken the same is in all things confirmed, from which report it appearing to the court that said J. A. Albright, the purchaser of lots Nos. 5 and 6 of the lots sold in this cause, has paid the purchase-money in full for said lots.

It is therefore ordered, adjudged, and decreed by the court that all the right, title, claim, and interest that the heirs of Garland B. Miller,
99 dec'd, have or had in and to said lots Nos. 5 and 6, be divested out of them and vested in said J. A. Albright; and it is further ordered by the court that said special commissioner make deed to said Albright for the same, he paying for the same. All other matters are reserved.

STATE OF TENNESSEE:

At a county court began and held for the county of Lincoln, in said State of Tennessee, at the court-house in the town of Fayetteville, on the first Monday in July, the same being the 3d day of said month in the year of our Lord, one thousand eight hundred and seventy-six.

Present and presiding, the Hon'l N. P. Carter, judge of the county court of said county, and W. A. Millard, sheriff of said county, and P. D. Boyce, clerk of said court, the following proceedings were had, viz:

FRIDAY MORNING, *July 14th*, 1876.

Court met pursuant to adjournment.

Present and presiding, Hon'l N. P. Carter, judge of the county court of Lincoln County, and P. D. Boyce, c'erk of said court.

G. B. MILLER & OTHERS
vs.
W. G. & MILLER OTHERS.

100 This cause came on to be further heard, and was heard at the July term, 1876, upon the proceedings heretofore had, and on motion of Jno. Y. Gill, special commissioner to enforce his lien on lot No. 7, known as the stable lot, sold in this cause to E. C. McLaughlin and Thos. J. Price, by a sale of the same for cash, and it appearing to the satisfaction of the court that E. C. McLaughlin and Thomas J. Price purchased the said lot No. 7 on the 21st of November, 1872, under a decree of the county court pronounced in this cause, for the sum of one thousand dollars, of which sum one hundred dollars was paid in cash, and two notes for $450.00 each, due at one and two years, were executed by said E. C. McLaughlin and Thos. J. Price, with E. L. Allen and E. P. Reynolds as securities, and it further appearing that at the January term, 1875, of this court, Jno. Y. Gill, special commissioner, recovered a judgment for four hundred and fifty-one dollars and 65 cents for the use of the heirs of G. B. Miller, deceased, and also the costs against E. C. McLaughlin, Thos. J. Price, E. L. Allen, and E. P. Reynolds, and it appearing that on the 22d of April, 1876, execution issued on said judgment and was placed in the hands of W. A. Millard, sheriff of Lincoln county, which
101 has been returned, no property of any of the defendants to be found in any county out of which to satisfy this execution, and it appearing that there remains due and unpaid on said execution issued on said judgment the sum of three hundred and ninety-three dollars and forty-one cents, it is therefore ordered, adjudged, and decreed that unless the said E. C. McLaughlin, Thos. J. Price, E. L. Allen, and E. P. Reynolds shall, on or before the first Monday in September next, pay to John Y. Gill, the special commissioner, said sum of three hundred and ninety-three dollars and 41 cents and the interest and costs, the said John Y. Gill, after giving public notice as required by law of the time, place, and terms of will proceed to sell said lot No. 7, at the court-house door in the town of Fayetteville for cash, and make report of his proceedings to the succeeding term of this court after the sale.

TUESDAY MORNING, *April* 17th, 1877.

Court met pursuant to adjournment.

Present and presiding the Hon'l N. P. Carter, judge, &c., and P. D. Boyce, clerk.

G. B. MILLER ET ALS.
vs.
W. G. MILLER ET ALS.

102 In this cause it is ordered by the court that the special commissioner, Jno. Y. Gill, on or before the first Monday in May report to this court.

1st. The amount of collections and from whom collected, made by him in this cause.

2d. To whom he has made payments and on what account such payments have been made, and the amount of said payments.

3d. How much remains unpaid and from whom it is due and to whom such unpaid sums are due.

STATE OF TENNESSEE:

At a county court began and held for the county of Lincoln, at the court-house in the town of Fayetteville, on the first Monday in Jan'y, the same being the 7th day of said month, in the year of our Lord one thousand eight hundred and seventy-eight, present and presiding the Hon'l N. P. Carter, judge, &c., and P. D. Boyce, clerk of said court, and W. A. Millard, sheriff of said county.

FRIDAY MORNING, *Jan'y* 18th, 1878.

Court met pursuant to adjournment.

Present and presiding the Hon'l N. P. Carter, judge, &c., and P. D. Boyce, clerk.

103 G. B. MILLER ET ALS.
vs.
W. G. MILLER ET ALS.

This cause came on to be further heard on this 18th Jan'y, 1878, before the Hon'l N. P. Carter, judge of the county court of Lincoln County, when it appeared to the court that judgment was rendered at the Jan'y term, 1875, of this court in the above-entitled cause, in favor of Jno. Y. Gill, special commissioner, for the use of the heirs of G B. Miller, dec'd, against Boyles and Burnam, principals, and J. C. and R. L. Bright, securities, for eleven hundred and fifty-six and $\frac{62}{100}$ dollars ($1,156.62) together with four dollars and 45 cents ($4.45) costs, which judgment is credited Jan'y 25th, 1875, with two hundred and thirty dollars ($230.00), and it appearing to the court that a *fieri facias* was issued on said judgment to W. A. Millard, sheriff of Lincoln County, on the 31st day of September, 1877, and returned to office with two endorsements thereon, the first as follows: "Came to hand same day issued, and there being none of the goods and chattels of Boyles and Burnam to be found in my county to levy this *fi fa* on, I therefore levy the same on all the right, title, claim, and
104 interest that Jas. H. Burnam has in and to the following tract of land lying in Lincoln County, Tennessee, civil district No. 8, and bounded as follows, to wit: On the north by the Fulton heirs, on the south by N. O. Greene & wife, east by a street, and west by James Fulton, containing 30½ acres more or less. For more particular description of said land reference is here made to deed from J. P. Dismukes & wife to J. H. Burnam, bearing date March 7th, 1868, and registered in the register's office of Lincoln County, in Book D, page 264. This levy made subject to a former levy in favor of First National Bank vs. S. M. McElroy and J. H. Burnam, levied this Sept. 29th, 1877."

The second endorsement is as follows: "Came to hand same day issued, and returned to office; nothing made; the land levied on not sold, prior levy being on the same in favor of First National Bank Fayetteville vs. S. M. McElroy & others, this Nov'r 5th, 1877."

It further appearing to the court from endorsements that the land mentioned and described in the first of the foregoing endorsements was not sold because of a prior levy, it is therefore ordered by the court that a venditioni exponas issue to the sheriff of Lincoln County commanding a sale of said land to satisfy the balance of said judgment, interest, & costs.

105 STATE OF TENNESSEE:

At a county court began and held for the county of Lincoln, in said State of Tennessee, at the court-house in the town of Fayetteville, on the first Monday in June, the same being the 3d day of said month, in the year of our Lord one thousand eight hundred and seventy-eight, present and presiding the Hon'l N. P. Carter, judge, &c. and P. D. Boyce, clerk of said court

SATURDAY MORNING, *June 29th*, 1879.

Court met pursuant to adjournment.

Present and presiding Hon'l N. P. Carter, judge, &c. and P. D. Boyce, clerk, &c.

G. B. MILLER ET ALS
vs.
W. G. MILLER ET ALS.

In this case it appearing to the satisfaction of the court that the entire purchase-money of lot No. 2 has been satisfied and discharged by the levy and sale of the house & lot belonging to J. H. Burnam for the satisfaction of the balance on the judgment heretofore rendered in this cause against Boyles & Burnam, the purchasers thereof, it is therefore ordered, adjudged, and decreed by the court that all the right, title, claim, and interest that the heirs of G. B. Miller, dec'd, have in and to said lot
106 No. 2, be divested out of them and vested in the said firm of Boyles & Burnam, the said firm being composed of Geo. B. Boyles and J. H. Burnam, and the special commissioner will make a deed to said Boyles and Burnam therefor, or the clerk of this court will give said parties a copy of this decree for registration as they may desire—said lot No. 2 being 29 feet six inches front and 92 feet deep, and bounded on the north by the public square, east by the Hines building and lot No. 8, sold in this cause, and west by lot No. 1, sold in this cause.

STATE OF TENNESSEE:

At a county court began and held for the county of Lincoln, in said State of Tennessee, at the court-house in the town of Fayetteville, on the first Monday in July, the same being the 1st day of said month, in the year of our Lord one thousand eight hundred and seventy-eight, present and presiding the Hon'l N. P. Carter, judge of the county court of said county and P. D. Boyce, clerk of said court and W. A. Millard, sheriff of said county.

SATURDAY MORNING, *July 20th*, 1878.

Court met pursuant to adjournment.

Present and presiding the Hon'l N. P. Carter, judge, &c., and P. D. Boyce, clerk.

107 G. B. MILLER ET ALS.
vs.
W. G. MILLER ET ALS.

This cause came to be heard on this 20th day of July, 1878, upon the report of the special commissioner in this case, which report is in the words and figures following, viz:

To the Hon'l. N. P. Carter, judge Lincoln County court, presiding at Fayetteville:

The undersigned would respectfully report that pursuant to a decree of this court, rendered at the May term, 1877, in the above cause, he, after giving due notice as required, &c., attended at the court-house door in Fayetteville, on Saturday, —th June, 1877, and offered the stable lot (No. 7, Miller block), for sale to the highest bidder for cash, when, among others, M. D. Hampton and C. S. Wilson became bidders, and bid the sum of $415.00, which being the highest and best bid they became the purchasers of said lot, after paying said sum of $415.00.

The undersigned would further report that he made report of said sale to the October term, 1877, which report was confirmed, from which he made a deed to said Hampton and Wilson (as sp'l com'r). He further reports that he has paid out said money to S. W. Carmack as guardian of W. G. and Pauline Miller, taking receipt therefor, &c.

JOHN Y. GILL,
Special Commissioner.

108 To which report there being no exceptions the same is in all things confirmed. It is ordered by the court that all the right, title, claim, and interest, which the legatees, devisees, and heirs at law of Garland B. Miller, dec'd, have in and to said stable, lot No. 7, be divested out of them and vested in the said M. D. Hampton and C. S. Wilson and the special commissioner will make them a deed therefor. This entry should have been made as of the October term, 1877, and is entered *nunc pro tunc.*

STATE OF TENNESSEE,
Lincoln County:

I, Paul D. Boyce, clerk of the county court of said county, certify that the foregoing is a true and perfect transcript of the record and proceedings in the cause of G. B. Miller et als. vs. W. G. Miller et als. as the same appears on file and of record in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court at office in Fayetteville this 18th day of October, 1879.

[SEAL.] PAUL D. BOYCE.
Clerk.

109 *Whiskey papers.*

Filed October 30th, '82.

CHAS. NASH,
D'p'y Cl'k.

SHELBYVILLE, *September 10th*, 1868.

Then rec'd of W. M. Alexander $1,400.00 (fourteen hundred dollars), the balance in full of amounts of money collected and received by him on

a lot of (34) barrels and parts of barrels of whiskey said Alexander sold by my special appointment of him as agent to dispose of said whiskey, on which a lien was retained for taxes due the United States from Alexander & Co., distillers of Lincoln County, Tenn.

JOSEPH RAMSEY,
Collector of the 4th Dist., Tenn.

DEPOSITIONS.

Notice of sale of E. L. Allen's property.

By virtue of the power and authority vested in me by one distraint warrant issued to me Jan'y 21st, 1876, by and under the authority of the United States, I will, on Friday, 25th of February, 1876, offer for sale, at public auction, in the town of Fayetteville, Tennessee, and
110 to the highest bidder, for cash, certain of the property and estate of E. L. Allen, which I, by virtue of said warrant, have seized and levied upon as deputy collector for the payment of taxes and penalties due and owing from the said E. L. Allen to the United States, and the particular estate to be sold is as follows, to wit:

Town lots and houses in the town of Fayetteville, Tennessee, one bounded on the north by James Vaughn lot, east by the Shelbyville & Fayetteville turnpike road, south by a street and the property of W. N. Wright, and on the west by a lot owned by W. W. Thompson & wife.

Another lot, bounded on the north by a street and the property of D. P. Holman, east by a lot of Alex. Johnson, south by a lot of Lewis Bright, and west by the property of J. G. Woods; and also the undivided one-half interest in the livery stable and ground now occupied by E. C. McLaughlin, and bounded on the north by the property of Jno. Y. Gill, on the east by the property formerly owned by R. Farquharson, south by a street and the property of C. S. Wilson, and on the west by a street leading from the square to the rock bridge across Elk River. Also the
111 house & lot now occupied by T. J. Carter as a saloon, and bounded north by a street, east by the property of B. F. Goodrich, south by the property occupied by Dean & Neeld.

Also on Saturday the 26th Feb'y, 1876, I will sell as aforesaid for the purposes aforesaid, all the right, title, claim, and interest, which said E. L. Allen has in and to a certain other tract of land in Lincoln County, said State, sold by the chancery court at Fayetteville, Tennessee, as lot No. 2, in the cause of W. H. Allen vs. R. S. Woodard, executor, and formerly owned by Cornelius Allen, now dec'd, in dist. No. —, of said county, said land will be sold at the forks of the roads beyond Samuel Hamilton's, in said county and said State. I will at the times and places of the above sales fix the minimum prices of each piece of property when offered for sale.

This the 24th day of January, 1876.

W. B. NICKS,
Dep'y Coll'r 4th Dist.

True copy:

W. B. N., *D. C.*

Notice of sale of E. L. Allen's property.

Mr. E. L. ALLEN,

SIR: You will take notice, and notice is hereby given you, that
112 on Friday, the 25th February, 1876, I will offer for sale at public auction in the town of Fayetteville, and to the highest bidder for cash, certain of your estate which I have seized as deputy collector for the payment of taxes and penalties due and owing by you to the United States of which you have had verbal notice of late, and for which demand has been duly made, and the particular estate to be sold is as follows, to wit: Lots in the town of Fayetteville, Lincoln County, Tennessee; one bounded on the north by James Vaughan lot, east by the Shelbyville & Fayetteville Texan pike road; on the south by a street and the property of W. N. Wright, and on the west by a lot owned by W. W. Thompson & wife.

Another lot bounded on the north by a street, and the property of D. P. Holman, east by a lot of Alexander Johnson, south by a lot of Lewis Bright, and on the west by the property of J. G. Woods. Also your undivided one-half interest in the livery stable and ground now occupied by E. C. McLaughlin. Also the house and lot not occupied by T. J. Carter as a saloon, being the same you purchased from Donghat, and all the right,
113 title, claim, and interest, which you have in and to a certain tract of land on Elk River, Lincoln County, Tennessee, formerly owned by Cornelius Allen, and of which you became one of the purchasers at chancery sale.

The latter tract will be sold on Saturday, the 26th of Febr'y, 1876, at auction, to the highest bidder for cash, at the forks of the roads beyond Sam. Hamilton's, near the premises.

This the 24th day of January, '76.

W. B. NICKS,
Dep'y Coll'r.

W. M. Woodcock.

In the circuit court of the United States for the middle district of Tennessee.

UNITED STATES
vs.
C. S. WILSON ET AL., EX'RS, &C.

The deposition of W. M. Woodcock, taken upon interrogatories and cross-examinations at 33½ College street, Nashville, Tenn., on the 10th day of Oct., 1879, before J. W. Campbell, U. S. commissioner, said deposition to be read as evidence on the part of the United States on the trial of said cause.

W. M. WOODCOCK:

Q. State what is your official position.

A. I am collector of internal revenue for the fifth collection district of Tennessee.

Q. Are you not the successor in office of Joseph Ramsey and J.
114 W. C. Bryant, former collectors of internal revenue?

A. I am the successor in office of Jos. Ramsey and J. W. C. Bryant, late collectors of the 4th district of Tennessee.

Q. If you answer yea, please state if you are the custodian of their official records.

A. I am the custodian of their official records.

Q. If so please examine the assessment rolls for July, 1867, and see if there is an assessment against the firm of Alexander & Company. If so, state the amount thereof.

A. On the July list, 1867, there is an assessment against Alexander & Co., of $2,156.06, on which $707.30 was paid to Jos. Ramsey, late collector, and there is a balance yet due of $1,448.76.

Q. Please examine distraint warrant Ex. A., and state if it is the original warrant with the return then made by W. B. Nicks & file the same.

A. The warrant marked "Ex. A" is the original warrant.

Q. Is W. B. Nicks living or dead, and is his signature attached thereunto genuine or not?

A. W. B. Nicks is dead; his signature to the levy on Exhibit A. is genuine.

Cross-interrogatories:

Int. 1. Examine carefully, closely, and fully all the papers, books,
115 letters, assessment rolls, and every paper in your office of every description whatsoever relating to or having any bearing whatsoever on the origin and history of the tax referred to and covered by the distress warrant referred to in your examination-in-chief, and file them as exhibits to your deposition; or if the rules of your office forbid you to file the originals then file copies of the same.

Int. 2. Assuming that said papers, letters, &c., will show the following state of facts, to wit, that said Alexander & Co. obtained from the deputy collector at Fayetteville a permission to ship the whiskey, for which the taxes covered by the distress warrant, in part, are demanded, to Memphis; that said taxes on the entire lot of whiskey so shipped amounted to some $4,300.00; that said whiskey was then worth some $7,000.00 or $3.25 per gallon, there being some 2,250 gallons; that when said whiskey reached Huntsville, Alabama, it was stopped while in transitu by the orders of the Government on the grounds that the assessment of the No. of gallons before made by the Government gauger was too small; that on a reassessment the proper officers of the Government decided that
116 there had no wrong whatever been committed in and about the assessment or shipment of the whiskey; that the Government, however, directed said whiskey to be stopped at Huntsville until the taxes were paid; that the Government thereupon appointed one W. M. Alexander its agent to sell said whiskey; that said agent under the advice of the collector, Mr. Ramsey, kept said whiskey in an old shackling shell of a warehouse from about May, 1867, until Nov., 1867, over the repeated remonstrances of Alexander & Co. until all of said whiskey was stolen or wasted, except some 800 gallons, in which he realized some $2,800, and applied to the $4,200, leaving the $1,400, principal unpaid, on which the distress warrant aforesaid is predicated. Assuming such to be the facts, whether shown by said papers or otherwise, then is not the taxes covered by said warrant unjust, inequitable, and oppressive? Is it not unjust and

oppressive for the Government to let said balance of taxes lie without demand under the above facts from Nov., 1867, until January, 1876, and then demand 12 per per cent. per annum damages thereon? If it was an individual making such a demand under such a state of facts,
117 would you not denounce him as a thief?

(The district attorney excepts to question renewed on cross-examination as irrelevant and scandalous.

Re-examination:

Please examine Ex. A and B, and state if they are not in the handwriting of W. B. Nicks, deputy collector, and if his signature thereto is genuine, and whether it was his duty to give such notice.

To the first interrogatory the witness says: That it appears to him that the examination therein called for is more properly the work for the attorney who represents the defendants. That the examination which would have to be made to enable him to file copies of all papers &c., relating to the matter, would take much more time than the witness could devote to that purpose. But the witness will furnish the attorney with all the facilities in his power to enable him to select such papers as he may desire that bears upon the matter, and will have any copies of such papers as said attorney may have prepared, carefully compared, and will certify to their correctness.

118 To the second cross-interrogatory he says: That the question is a legal one, and does not call for any fact that could be within his knowledge. The witness being collector of internal revenue, and not U. S. circuit judge he declines to express an opinion on the subject.

W. M. WOODCOCK,
Coll'r Int. Rev., 5th Dist. Tenn.

Sworn to & subscribed before me this 10' day of Oct., 1879.

J. W. CAMPBELL,
U. S. Com'r.

UNITED STATES OF AMERICA,
Middle District of Tennessee, ss:

I, J. W. Campbell, a commissioner of the circuit court of the United States for the middle district of Tennessee, do hereby certify that the foregoing deposition was taken by me as stated in the caption, that the answers of the witness were written down by me and that the same was carefully read over to the witness who signed the same in my presence, and was by me sworn to the truth thereof. And I do further certify that said deposition remained in my possession after the same was taken until the same was delivered by me to the clerk of the circuit court of the United States for the middle district of Tennessee.

In testimony whereof I have hereto set my hand at Nashville, this 10th day of October, 1879.

J. W. CAMPBELL,
U. S. Com'r for Middle District Tenn.

119 Warrant.

Exhibit A to deposition of W. M. Woodcock, J. W. Campbell, U. S. com'r.

UNITED STATES OF AMERICA,
4th Collection District of Tennessee:

To W. B. NICKS, deputy collector:

Whereas, in pursuance of the provisions of the acts of Congress of the United States, to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes, the several persons and firms named in the list or schedule signed by me and hereto annexed, have become chargeable with, and are indebted to the United States for, the taxes assessed against them respectively, in the amount set forth opposite the name of each in the aforesaid list or schedule, together with the penalty as therewith stated, amounting, in the aggrgate, to three thousand fifty-seven and $\frac{16}{100}$ dollars, for neglect to pay said tax when the same became due; and, whereas, more than ten days have elapsed since payment of said taxes was demanded of each of said persons or firms, and as they still neglect and refuse to pay the same, you are hereby com-
120 manded distrain upon so much of the goods, chattels, and effects of each of them respectively, if any such can be found, as may be necessary for the payment of the taxes and penalties due and owing by them, respectively, as set forth in the aforesaid schedule, and also for the payment of all necessary and reasonable fees and expenses of each said distraint, with the commission chargeable by law. And you will safely keep all property so distrained, and do all things needful and necessary to be done in the premises, as required by law, before the sale thereof. But in case sufficient goods, chattels, and effects cannot be found, then you are hereby commanded to seize so much of the real estate of each of said persons or firms as may be necessary for the purposes aforesaid. And for so doing this shall be your warrant; of which make due service and return to me at this office.

Witness my hand and official seal at Shelbyville, this 21st day of January anno Domini, 1876.

J. W. C. BRYANT,
Collector of Internal Revenue, 4th District of Tennessee.

(On the reverse side of which warrant is the following.—CLERK.)

121 *Schedule.*

Name.	Location.	Description of tax.	Amount of tax.	Penalty.	Total.	Remarks.
Alexander & Co..	Lincoln Co., Tenn.	Tax on distilled spirits.	1,484 70	1,573 10	3,057 16	On July list, 1867.

By virtue of the power and authority vested in me, Wm. B. Nicks, deputy collector, by this warrant, and sufficient goods, chattels, and effects of each of the parties respectively against whom it issued, and known under the firm name and style of Alexander & Co., not having been found as is

sufficient and necessary for the payment of the taxes and penalties due and owing by them, as set forth in the above schedule, and also for the payment of all necessary and reasonable fees and expenses of distraint, with commissions, I, the said Nicks, hereby seize and levy this warrant upon the following described property of E. L. Allen, one of the members of said firm, and upon all the right, title, claim, and interest of whatever character, legal or equitable, he has, or may have, or had at the demand of payment of said taxes, in and to the same for the purposes aforesaid. Demand of payment of said taxes having been made of said firm, and of each member thereof, on the 2d January, 1869, and also on the
122 17th December, 1875. The property hereby seized and levied upon as aforesaid is as follows, to wit: Lots of land, rights therein and thereon, all in the town of Fayetteville, Lincoln County, Tennessee; one bounded on the north by James Vaughan's lot; on the east by the Shellbyville and Fayetteville turnpike road; on the south by a street and the property of W. N. Wright, and on the west by a lot owned by W. W. Thompson & wife. Another lot bounded on the north by a street and the property of D. P. Holman; on the east by a lot of Alex. Johnson; on the south by a lot of Louis Bright, and on the west by the property of J. G. Woods. Also an undivided one-half interest in the livery stable and ground now occupied by E. C. McLaughlin, and bounded on the north by the property of J. Y. Gill; E. by the property formerly owned by R. Farquharson; south by a street and the property of C. S. Wilson; on the west by a street leading from the square to the rock bridge across Elk River. Also the house and lot now occupied by T. J. Carter as a saloon, and bounded on the north by a street; east by the property of B. F. Goodrich; south by the property of Tobe Bonner; west by the property occupied by Dean and Neeley, being the house and lot said E. L. Allen purchased from Douthat.

123 Also a certain tract of land in said county and State, on Elk River, formerly owned by Conelius Allen—now deceased—and sold by the chancery court at Fayetteville, Tennessee, as lot No. 2, in the cause of Wm. H. Allen vs. R. S. Woodard, executor, and bounded as follows: Beginning at a pin-oak standing on the south bank of Elk River, a northeast corner of lot No. 1 of said Cornelius Allen, land, and running from thence north with the north boundary line of lot No. 1, 272 poles to an elm on the south bank of said river a northwest corner of lot No. 1; thence up the river with its various meanderings 716 poles to the beginning; containing 292 acres and 138 poles by survey, bearing date November 12th, 1872, in said cause at Fayetteville, Tennessee.

All which said above-described property being covered by a lien in favor of the United States for the aforesaid taxes and penalties assessed against said parties, for which demand was duly made as aforesaid.

This the 22' day of January, anno Domini 1876.

W. B. NICKS,
Dep'y Coll'r.

I, William B. Nicks, deputy collector as aforesaid, pursuant to the power aforesaid, under the foregoing and within warrant, have
124 made an account of the goods and effects destrained and herein above fully described, a copy of which account signed by me was

left with E. L. Allen, the owner of said goods and effects, with a note of the sum demanded, and the time and place of sale; and I did forthwith cause a notification to be published in the Fayetteville Express, a newspaper published in Lincoln County, Tennessee, in which county said above distraint was made, and did also cause to be publicly posted three other notices, one at Fayetteville, Tennessee, one at Mulberry, Tennessee, and one at Molino, Tenn., and said notices did specify the articles distrained and the time and place for the sale thereof and were made and bear date with the above levy—the 22 day of January, 1876; and said notices did advertize said goods and effects to be sold; the town lots and all the goods and effects described in the within warrant, excepting the tract of land last described, on the 25' day of February, 1876, and the tract of land last described on the 26th day of February, 1876, and said proposed sales were adjourned and postponed respectively to the 24th and 25th of March,
1876, and on which days said property was sold by me, the town
125 property on said 24' March was sold in the town where situate at the court-house door and nearer than five miles of the same, and the land last described in said distraint above was sold by me on said 25' of March, 1876, at the forks of the road, near Samuel Hamilton's, a place nearer than five miles of said land sold as aforesaid on said 25' March, 1876.

The date of the special order of the commissioner, D. D. Pratt, postponing sale bears date February 21st, 1876, and the said notices were posted at the post-offices nearest to the estate sold as aforesaid; and I did sell said estate, each parcel as described in said distraint warrant, separately at public auction, offering the same at the minimum prices, including the expenses of levy, all charges of advertising, and officers' fees of ten dollars on each parcel, and all other expenses as follows: that is to say, the minimum prices of each parcel was as follows, to wit:

Taking the lots in the order in which they are above described: Lot No. 1 at the minimum price of three hundred and sixty-four dollars ($364.00); lot No. 2 at the minimum price of two hundred and twelve dollars and fifty cents ($212.50); lot No. 3 at the minimum price of four hundred and fourteen ($414.00); lot No. 4 at the minimum price of
126 eight hundred and eighteen dollars ($818.00); lot No. 5, or the tract of land described in said within levy, at the minimum price of thirteen hundred and fifty-one dollars and eighty-five cents ($1,351.85). And these minimum prices resulted from the apportionment of the debt due, the expenses, charges, and fees aforesaid, to the several tracts and parcels of property aforesaid. And no person having offered for said estate nor for any parcel thereof the minimum price fixed thereon as aforesaid, I did therefore declare, according to law, the same and each parcel thereof separately to be purchased by me for the United States.

W. B. NICKS,
Dep'y Coll'r.

MARCH 25TH, 1876.

Filed Aug. 15th, '78.

LEWIS T. BAXTER, *Clk.*

In the circuit court of the United States at Nashville. In equity.

UNITED STATES
vs.
C. S. WILSON ET ALS.

Deposition.

W. M. WOODCOCK recalled by defendants for cross-examination, by consent.

127 X Int. 1. State if you have examined the assessment rolls of your office for the whole amount of spirits assessed against Alexander & Co., distillers, of Lincoln County, for the years 1866 & 1867; if so, state the number of barrels and gallons they made, as shown by their assessments during those years; when did they commence and when did they entirely cease business, giving exact dates, from any of the records in your office, and how many gallons they had on hand on which they had not paid taxes when they so ceased business, and what was their capacity per diem.

X Int. 2. Do any of the records of your office show that the notice and demand required by sections 3184 and and 3185, United States Revised Statutes, ever at any time issued from your office?

X Int. 3. Clauses in said section 3155 provides, "That notice of the time when such tax becomes due and payable is given in such manner as may be prescribed by the Commissioner of Internal Revenue," and that "demand" shall be made "in the manner prescribed by law." Now, please state the number, dates, &c., of the regulations prescribed by the Commissioner of Internal Revenue for said notice and demand. Please

128 file a copy of the blank notices and the blank demand used in your office as exhibits to this yonr deposition.

X Int. 4. Do not the regulations require that a written memorandum of said notice and demand, one or both of them, embracing the fact and date of issuance, shall be made on the assessment roll or book or on some book of your office?

X Int. 5. Give the exact date, as shown by the records of your office, when Joseph Ramsey ceased to be collector of internal revenue of the district in which Lincoln County, Tennessee, was then embraced, and the exact date when his successor assumed the duties of his office.

X Int. 6. When do the records of your office show that W. B. Nicks first entered upon the duties of his office as deputy collector of Lincoln County, giving the exact date, as nearly as you can?

X Int. 7. Who was the deputy collector of Lincoln County during the years 1866 and 1867, as shown by the records of your office, during the time Alexander and Co. were running their distillery?

129 X Int. 8. Do not the records of your office show that the books, records, and papers of your office, during its occupancy by Joseph Ramsey, James Mullins, and J. W. Bryant, were very carelessly and negligently kept and the duties of the office carlilessly and negligently performed? Have you not in your administration of the office found many errors of omission and commission, as shown and evidenced by their books and papers?

X Int. 9. Please file, as an exhibit to your deposition, the original letter of D. D. Pratt, Commissioner of Internal Revenue, dated Washington, Feb'y 18th, 1876, in reference to the $1,448.70 taxes on spirits in litigation in this case.

EXHIBIT A.

Notice of taxes assessed.

List ——— } UNITED STATES INTERNAL REVENUE,
Div. ——— } OFFICE OF THE COLLECTOR OF INTERNAL REVENUE,
——— *District, State of* ———, ——— —, 18—.

M. ——— ———:

The tax assessed against you for 18 , amounting to $, is due and payable on or before the day of , and unless paid within that time it will become my duty to collect the same, with a penalty of 5 per centum additional, and interest at one per centum per month.

———— ————,
Collector.

Bring this notice with you.

130 EXHIBIT B.

General demand for taxes.

OFFICE OF THE COLLECTOR OF INTERNAL REVENUE,
——— *District, State of* ———, ——— —, 187–.

——— list.]

M. ———:

A tax under the internal revenue laws of the United States, amounting to $\frac{}{100}$ dollars, being for , has been assessed against you, and transmitted to me by the Commissioner of Internal Revenue. The same not having been paid within the time required by law, you became liable to pay five per centum additional upon the amount thereof, and interest at the rate of one per centum per month from the day of , 187 , and demand is hereby made upon you for the said tax, with the additional five per centum and such interest as may accrue before payment. If not paid within ten days from the personal service or mailing hereof, it will become my duty to collect the same by distraint and sale of property.

Payment may be made to at .

Am't of tax ..... $
Penalty .....

Total.....

———— ————,
Collector.

Bring this notice with you.

131 EXHIBIT C.

[All official letters to this office must be addressed to the Commissioner of Internal Revenue, and in replying to letters from this office, the marginal initials should be referred to.—E. H. B.]

TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
Washington, Feb'y 18th, 1876.

SIR: Your letter of the 9th inst., submitting application of Messrs. Alexander & Co., late distillers in your district, to be relieved from the

payment of tax on spirits, amounting to $1,448.70, with accrued interest and penalty, has been received.

It appears that the claimants manufactured a quantity of spirits (about 2,200 gallons) in 1866 and 1867. There being no bonded warehouse in the district, and the parties being unable to pay the tax before they sold the spirits, the collector allowed them to remove said spirits from the district in an informal manner, giving them tax-paid papers and accepting collateral security for the tax. The claimants proposed to take the spirits to Memphis, Tenn., but they were seized in transitu at Huntsville, Ala.; on the ground that the packages contained more spirits than the marks, brands, and tax-papers showed, which proved to be a fact.

132 While under seizure at Huntsville, a considerable quantity of the spirits leaked or was stolen. It is on account of this loss that they claim relief. They propose to waive all claims for damages against the Government on account of the spirits so lost while in the custody of the U. S. officers if the tax on said spirits is remitted.

The fact that the then collector allowed the spirits to be removed in an informal manner, and that they were afterwards seized in another district and delayed under said seizure until a considerable portion of the spirits had leaked or was stolen, does not affect the legality of the assessment upon the quantity of spirits removed from the distillery. The tax accrued on the spirits at the time of the removal and should have been paid unless the removal was in bond.

The claim is rejected, and the tax should be collected without further delay.

Respectfully,

D. D. PRATT,
Commissioner.

J. W. C. BRYANT, Esq.,
Collr. Int. Rev. Shelbyville, Tenn.
C. H. J.

133 In the circuit court of the United States for the middle district of Tennessee.

THE UNITED STATES)
) In equity.
C. S. WILSON ET ALS.)

The depositions of W. M. Woodcock, collector of internal revenue for the 5th collection district of Tennessee.

The said W. M. WOODCOCK, being duly sworn, deposes & says as follows:

In answer to the first interrogatory he says that he has examined the assessment lists of the old 4th district of Tennessee for the years 1866 & 1867, in regard to the assessments against Alexander & Co., for taxes on whiskey produced by them. Said lists show that during said years they were assessed the sum of $3,666.00, being the tax at $2 per gallon on 1,833 gallons of whiskey. Said assessment lists do not show the number of barrels, but only the amount in gallons. Of the amount assessed said lists show that $1,355.30 of the amount was paid. The record of real estate

seized & sold shows that distraint warrant was levied on real estate to satisfy balance of assessments amounting to $1,448.70, from which it would seem that $862.00 assessed on March list, 1867, had been paid,
134 although the list does not show such payment. I have nothing in my possession showing when Alexander & Co. commenced or closed business in their capacity per diem.

In answer to the second interrogatory the witness says that the records in his office do not show that the notice and demand required by section 3184 of the Revised Statutes were issued from the office of the collector of the 4th district of Tennessee.

In answer to the third interrogatory the witness says that the regulation therein inquired about is found in series 7, No. 1, page 63, and the witness herewith files copys of the blank forms of such notices and demand, marked A and B respectively.

In answer to the 4th interrogatory he says that the regulations do not require that a memorandum of the date of the issuance of said notice and demand be made on the assessment list, but that that practice was adopted by him when he became collector.

In answer to the 5th interrogatory he says that the records of his office do not show when Jos. Ramsey went out of office as collector of
135 the 4th district, nor the date when his successor qualified.

In answer to the 6th interrogatory the witness says that the records of his office do not show when W. B. Nicks became a deputy collector of the 4th district.

In answer to the 6th interrogatory the witness says that his information is that Mr. — Farrar was deputy collector in 1866 and 1867.

In answer to the 7th interrogatory the witness says that he has no personal knowledge of how Jos. Ramsey, James Mullens, and J. W. C. Bryant administered the office of collector of the 4th district of Tennessee, nor as to their errors of commission, but from the records of said district now on file in this office it would appear that they omitted to file very many records and papers which should have been filed.

In answer to the 8th interrogatory the witness here files the original of said letter as requested, marked Exhibit C.

136 *Deposition of Joseph Ramsey.*

UNITED STATES }
C. S. WILSON & OTHERS. }

JOSEPH RAMSEY, witness for complainant.

Int. 1st. Were you at one time a collector of internal revenue; if so, for what years?

Int. 2d. Was the county of Lincoln within your collection district? If so, did you know a firm of distillers under the name of Alexander & Co.?

Int. 3d. On the July list, 1867, an assessment was made against the firm of Alexander & Co. for the sum of fourteen hundred and eighty-four dollars and seventy cents. Please state if you, as collector, made any demand or demands of Alexander & Co. for the payment of the tax; if so, at what times and in what manner and of whom was the demand made?

Cross-examined.

X-int. 1st. Please state your age & place of residence. Who composed the firm of Alexander & Co., referred to in interrogatory
137 No. 1 of this examination, giving their records in full.

X-int 2d. Did you have a deputy collector at Fayetteville, Tennessee, to wit: Samuel Farrer?

3d. Was the demand to which you may refer in your answer to direct interrogatory No. 3 made by you in person or by said Farrer? If you answer that it was by you in person, state the names of each person upon who' you made such demand. Was such demand in writing or verbal? Who was present when such demand was made in Lincoln County? If you answer and say that you made the demand by mail, state to whom and to what post-office did you address such demand. Did not the regulations of the internal-revenue office require you to enter on the assessment roll, or some other book in your office, a memorandum of the dates of the issuance of such demand and of the fact of its issuance? Did you not have clerks or a clerk in your office, and was it not your habit to impose the duties of issuing such demands on your clerk? Can you
138 solemnly swear on your own personal recollection that the demand referred to in this examination ever issued at all from your office? If so state how you happen to recollect such an event after the lapse of 13 years.

X-int. 4. State as nearly as you can the precise date when you ceased to be revenue collector. Was it not soon after March 4th, 1869?

X-int. 5. Are not these the facts in reference to the $1,484.00 enquired about in your examination in chief, to wit: Did not Alexander & Co. have some 45 barrels of whiskey seized by the Government of the United States at Huntsville, Ala.? Had not your deputy, Mr. Farrar, given Alexander & Co. permission to ship said whiskey to Memphis? Was it not seized on the information of one Clotworthy, a United States internal-revenue officer, on the grounds that the lot of whiskey contained more proof gallons than it had been gauged at? Did not the Government have it reguaged? Did not the Commissioner of Internal Revenue release said whiskey on the ground that there was no fraud in the gauging of it? Did not the Commissioner of Internal Revenue order you to hold said whiskey at Huntsville and sell it to pay the taxes due on it,
139 amounting to some $4,200? Did you not appoint one W. M. Alexander as your agent or the agent of the Government to sell it? Had not your deputy, Mr. Farrar, executed to Alexander & Co. a receipt for all the taxes on said lot of whiskey upon Alexander & Co. giving bond to him to pay the taxes after the whiskey should be sold at Memphis? Is not the $1,484.00 aforesaid the balance of taxes claimed to be due on said 45 barrels of whiskey after deducting the net proceeds of sales made at Huntsville by W. M. Alexander? Did you not appoint W. M. Alexander your agent to sell said whiskey?

X-int. 6. If you answer and say in your direct examination that the notice and demand required by section 3184 and 3185 of the Revised Statutes of the United States (acts of July 13th, 1866, and March 2d, 1867) were in fact issued and executed by you or your deputy, or sent by

mail, was it not your duty to make a memoranda of the fact and date thereof on the assessment rolls or some other book of your office?

7th. In the event you answer the last interrogatory in the affirmative, then state that in the event neither the assessment rolls of your
140 office or any other book of your office shows any memoranda whatever of the issuance of such demand or notice, are you still willing to answer that you in fact did issue or cause to be issued any such demand or notice. If said books show that you or your clerk failed or neglected to enter such memoranda, is it not equally probable that you failed and neglected to issue the notice and demand? Is not your statement that you in fact issued said notice and demand based rather upon an assumed idea or notion, upon your part, that you always tried to perform your duties than upon any positive recollection that you did in fact issue or cause to be issued and executed such demand and notice?

Commission.

The President of the United States of America to James H. Neil, esq., greeting:

Know ye that, reposing special trust in your diligence and fidelity, you are, by these presents, appointed and invested with full power and authority to cause to come before you at your office in Shelbyville,
141 Tenn., on some day to be by you appointed, Joseph Ramsey, and examine him upon his corporal oath upon the interrogatories and cross-interrogatories hereto attached as a witness in behalf of the pl't'ffs, in a certain cause depending in the circuit court of the United States for the middle district of Tennessee, wherein the United States and C. S. Wilson et als.

Said deposition when taken to be read as evidence on the part of the pl't'ffs on the trial of said cause.

And when you have taken his testimony, and reduced the same to writing, you will return the same together with this commission, closed up under your seal, to the clerk of the said circuit court at Nashville, Tennessee, with all convenient speed.

Witness the Hon. M. R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of our said court at Nashville, this 25th day of May, 1881.

[SEAL.] LEWIS T. BAXTER, *Clk.*

THE UNITED STATES
vs.
C. S. WILSON ET ALS.

In pursuance of the dedimus testatem to me directed by
142 Lewis T. Baxter, clerk of the circuit court of the United States for the middle district of Tennessee in the above-named case, I hereby certify that on the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and eighty-one, I caused to come before me Joseph Ramsey, of Bedford County, at my office in Shelbyville, Tennessee, and the said Joseph Ramsey being carefully examined before me upon the

interrogatories for the plaintiff and defendant herewith filed, he first being sworn according to law, deposed as follows:

And the said JOSEPH RAMSEY being carefully examined and cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth, saith as follows:

Int. 1. To 1st interrogatory by plaintiff he answers: Ans'r. I was from Dec. 10th, 1866, to July 1st, 1869. I may be mistaken as to the exact days, but think I am not.

Int. 2. To the 2d interrogatory he answered: Ans'r. Lincoln County was in my district and I knew a firm doing business as distillers near Fayetteville, Lincoln County, under the firm name of Alexander & Co.

143 Int. 3. To 3d interrogatory he answers:

Ans'r. There was an assessment against said firm for about twenty-eight hundred dollars; for and on account of said assessment a lot of whiskey was seized at Huntsville, Ala., and the same was subsequently released, and at the request of the firm I appointed Wiley Alexander to sell the same and pay over the internal revenue into my office. Wiley Alexander afterwards informed me that he had sold said whiskey, and he paid me about fourteen hundred dollars, leaving a balance of about fourteen hundred dollars behind, which he refused to pay, saying that the Government had on former occasions swindeled the firm by seizing some whiskey of theirs in Alabama and had sold the same; that he had the money in his hands, and intended to protect the firm and his boys.

I made repeated demands of the firm for said balance of assessment. (I made the demand as collector.) I made the demands in writing and verbally. I often made the demands myself, personally, and through my deputy, Samuel Farrar.

The demands made by me in writing were addressed to the firm
144 of Alexander & Co., and I made verbal demand for the payment of said assessment of Lee Allen, one of the firm, and I made frequent demands of Wiley Alexander, who was the father of two of the firm, and he having sold the whiskey as above stated. These demands were made from the latter part of the year 1867 through the year 1868.

Cross-interrogations.

1st. X-int. To 1st cross-interrogatory he answers:

Ans. I was seventy-six (76) years old last August. I live at Shelbyville, Tenn.

The firm was composed of two sons of Wiley Alexander and Lee Allen.

I am not positive as to the given names of the two Alexanders, but think one was named Samuel Alexander and the other John Alexander, but I will not say positively what there given names were. I think that one was usually called Sam Alexander and the other John Alexander.

2d. int. To 2d cross-interrogatory he answers:

Ans. I did.

5th. int. To 3d int. he answers:

Ans. The demands were first made by Sam'l Farrer, my deputy, when they refused to pay. I then made frequent demands myself. I made frequent

demands of Lee Allen and Sam Alexander. I don't think that
145 I ever made any demands of John Alexander. I also made frequent demands of Wiley Alexander, the father of two of the firm, who had been appointed and authorized to sell the whiskey and pay over the revenue.

The demands were both in writing and verbal. The first was by a printed and written demand, and my recollection is that the subsequent demands were verbal. I cannot say who was present; I think that no one was present; I never dunned a man publicly; the demands were made both in Lincoln County and Bedford County; all the demands made in Bedford County were made of Lee Allen; all the written demands were sent through my deputy collector, Sam'l Farrer, at Fayetteville; I do not remember the requirements of the regulation of internal revenue office, but whatever the requirements were I am satisfied they were complied with; I had a clerk in my office, Thomas B. Cannon; it was not the duty of the clerk to issue the notices; the Department furnished me printed blanks, which were distributed among the deputy collectors by the clerk; the clerk filled up the notices and sent them out to the deputy collectors.

146 I feel well satisfied that the demands were issued from my office and sent to my deputy, Sam'l Farrar, for I made frequent personal demands, and none of the parties at any time ever said anything about not having received the demand or notice.

This statement is made according to my best recollection, and I am pretty certain that I am correct, for my attention was particularly called to the matter and I had a good deal of trouble about it.

X-int. 4. To 4th X-int. he answers:

As stated above, I went out of office about the first of July, 1869, when I turned over the uncollected assessments to my successor in office, James Mullins.

5. To int. 5 he answers:

Alexander & Co. had some 45 barrels of whiskey seized at Huntsville, Ala. I think that my deputy, Sam'l Farrar, after the whiskey was released by the Commissioner, give them permission to ship a portion of it to Memphis.

The whiskey was seized upon the information of one Clotworthy, but upon what grounds I cannot say; I do not know that the Government had it regauged; I know that upon investigation the Commissioner released the whiskey, but upon what ground I do not know; I think
147 that I was instructed to hold the whiskey at Huntsville, Ala., and sell it for the purpose of paying the taxes due, amounting to about $2,800.

At the request of Alexander & Co. I appointed W. M. Alexander as my agent and the agent of the Government to sell said whiskey. I know very little of Wiley Alexander, but the firm requested that he should be appointed, and Mr. Beardon, the assessor at Fayetteville, represented that Wiley Alexander was a good and suitable man to sell it; that he was a good trader and very energetic. I therefore appointed him, as I always endeavored to accommodate all parties.

I think that Mr. Farrar did execute to Alexander & Co. a receipt for all the taxes on said lot of whiskey upon their giving to him a bond and

a mortgage, I think, to secure the payment of said tax after the whiskey should be sold.

Some thirty-odd barrels were sold by Wiley Alexander at Huntsville, and the balance was sold by Lee Allen at Memphis, as I was informed by W. M. Alexander and Lee Allen.

Wiley Alexander paid me $1,400 out of the proceeds of the sale
148 of the whiskey sold by him at Huntsville. The balance is the unpaid taxes on the 45 barrels.

I did appoint Wiley Alexander to sell thirty-odd barrels at Huntsville, to collect the money, & pay the same over to me.

X-int. 6. To interrogatory 6th he answers: I do not now remember the requirements of the law & Department upon that subject, but am well satisfied that the requirements, whatever they were, were complied with.

X-int. 7. As stated above, I am satisfied that the law was complied with, but the books are more reliable than any man's memory. I am satisfied that the demand or notice was given. I had frequent conversations with Lee Allen and Wiley Alexander about it, and neither one of them at any time set up any plea that they had not had notice. I am satisfied also that the demand or notice was given, for the reason that I always tried to perform my duties, rather than upon any distinct recollection of the matter.

Q. by comr. Do you know of anything further that would benefit either party?

A. I do not.

JOSEPH RAMSAEY.

149 And I further certify that the preceding deposition was reduced to writing by me and signed by the said Joseph Ramsey in my presence, and that I am not of counsel or attorney for either of the parties to said suit, nor am I of kin to either of said parties to the said suit, nor am I interested in the event of said suit.

That I sealed this deposition up directed to Lewis T. Baxter, clerk of the United States circuit court, at Nashville, without the same having been added thereto or in any manner changed, and that the same has not been out of my possession.

Given under my hand and official seal, at Shelbyville, Tenn.

[SEAL OF OFFICE.] JAMES H. NEIL,
U. S. Com'r.

MAY 25TH, 1881.

EXHIBIT A.

Deposition.

(21.)

[General demand for taxes.]

OFFICE OF THE COLLECTOR OF INTERNAL REVENUE,

——— List.] ——— DISTRICT, STATE OF ———.

M. ——— ———:

A tax, under the internal revenue laws of the United States, amounting to $\frac{\quad}{100}$ dollars, being for , has been assessed against you
150 and transmitted to me by the Commissioner of Internal Revenue. The same not having been paid within the time by law, you became

liable to pay five per centum additional upon the amount thereof, and the interest at the rate of one per centum per month from the ——— day of ———, 187–, and demand is hereby made upon you for the said tax, with the additional five per centum and such interest as may accrue before payment. If not paid within ten days from the personal service or mailing thereof, it will become my duty to collect the same by distraint and sale of property.

Payment may be made to at .

Am't of tax..... $.....
Penalty..... .....

Total ....

——— ———, *Collector.*

[☞ Bring this notice with you.]

EXHIBIT B.

(17.)

United States internal revenue. Notice of taxes assessed.

List ———.
Div. ———.

OFFICE OF THE COLLECTOR OF INTERNAL REVENUE,
——— DIST., STATE OF ———,
——— —, 187–.

M. ——— ———:

The tax assessed against you for , 187 , amounting to $, is due and payable on or before the day of , and unless paid within that time, it will become my duty to collect the same, with a penalty of five per centum additional and interest at one per centum per month.

——— ———, *Collector.*

[☞ Bring this notice with you.]

151 In the circuit court of the United States at Nashville.

UNITED STATES
vs.
C. S. WILSON, M. D. HAMPTON, AND OTHERS. } In equity.

Depositions of W. S. Alexander and W. M. Alexander, witnesses on behalf of defendants, taken by consent of parties at Fayetteville, Tennessee, before James W. Goodwin, United States commissioner, in the presence of J. W. Newman, solicitor for defendants, and G. N. Tillman, ass't dist. att'y-general, one of the solicitors for complainant.

1. State your age and your place of residence now, and where have you resided from 1866 to the present time.

Ans. I am forty-four years of age; I now reside in Lincoln County, and have resided there since 1866.

2. Were you in 1866 and 1867 engaged in any and what business; if

in a firm, state the names of each and every member of said firm and its style; how long was said firm engaged in such business; what has become of the other members of said firm?

Ans. In the latter part of 1866 and the early part of 1867 I
152 was engaged in the manufacture of whiskey near Kelso Station, Lincoln County, Tennessee; it was a firm styled Alexander & Co.; the members of the firm were myself, E. L. Allen, and N. B. Alexander; we were engaged in the business about four months, and perhaps a little longer; E. L. Allen and N. B. Alexander are both dead.

3d. State if at any time and when, as nearly as you can, said firm shipped any and what amount of whiskey to Huntsville, Ala.; if so, how did you ship it, where was it stored, what was its destination, and what became of it?

Ans. In the spring of the year 1867, March or April, I believe, said firm shipped to Huntsville, Alabama, destined for Memphis, Tennessee, sixty-three barrels of whiskey, averaging about 44 gallons each; twenty barrels was shipped to Memphis and there seized by the Revenue Department of the United States; the remaining 45 barrels were seized by the same authorities at Huntsville, Alabama; the whiskey was shipped in wagons from Kelso to Huntsville, a distance of about thirty miles; there was no railroad by which it could have been transported at that
153 time; it was stored by us with *a* shipping commission merchants near the railroad depot of the Memphis and Charleston Railroad, our intention being to ship it immediately to Memphis; the name of the commission merchants were Shankland, Sprague & Co.

4th. State fully the circumstances under which your firm shipped said whiskey; that is, how you arranged and with whom, the revenue on said whiskey?

Ans. There was no local market for said whiskey in Lincoln County. Our means were limited and we were anxious to realize on our stock on hand that we might go on with our business. We did not have the money to pay the taxes. Thereupon Mr. Farrar, the deputy collector of Lincoln County, took our bond with security for the amount of the taxes, payable in a short time, and executed to us receipts for the taxes thereon in full. These receipts are now on file as exhibits to my deposition before the Claims Committee of Congress; Mr. Alfred Bearden, the assistant assessor of internal revenue of Lincoln County, the father-in-law of Mr. Farrar, counseled and advised us and Mr. Farrar in making this arrangement.

154 Int. 5. State the grounds upon which said whiskey was seized, and if it was released by the Government, the conditions upon which it was released.

Ans. It was seized at the instance of one Clotworthy, an internal revenue official; the only charge against said whiskey being that there were more proof gallons of whiskey in the 63 barrels than we had paid taxes for thereon. The whiskey was regauged and found to contain a few more gallons than we had accounted for; but as we were informed by the revenue officials, the Commissioner of Internal Revenue ordered the whiskey released on the grounds that the small difference in the amount of whiskey accounted for by us and the amount shown by the regauge was insufficient to base a charge of fraud upon. But the Commissioner held that the attempt to remove the whiskey to Memphis under bond for the taxes as

arranged between us and Farrar was irregular. He attached as a condition to the release that the whiskey should be held at Huntsville, Alabama, and there sold out.

155 Int. 6. State fully the circumstances under which said whiskey was sold. If any one was appointed as an agent of the Government to sell said whiskey, state who he was, about how long he was engaged in selling said whiskey. What was it worth per gallon, about how much he realized on it, and why he did not realize more than he did?

Ans. W. M. Alexander, an old whiskey dealer, and who was well acquainted in Huntsville, Alabama, was appointed an agent to sell said whiskey by Joseph Ramsey, the *the* then collector of internal revenue for the district in which said whiskey was manufactured. I don't remember how long he was engaged in selling it, but it was several months. I think he realized about $3,200, about $2,700 of which was applied to the payment in part of the taxes on said whiskey, the taxes amounting to some $4,200, leaving some $1,400 still due thereon, but I can't be precise in my figures. The whiskey at Huntsville, amounting to some 2,100 gallons, was worth about $3.25 per gallon, or, in the aggregate, to $6,825.00. W. M. Alexander sold none of it under $3.25 per gallon. Some one thousand or twelve hundred gallons of this whiskey was stolen from

156 the warehouse of the commission merchant at Huntsville, Alabama, where we had stored it, during the time Mr. W. M. Alexander was engaged in selling it. We, members of the firm of Alexander & Co., again and again complained to the revenue officials both at Huntsville and in Tennessee, that the whiskey was being stolen, and we repeatedly asked them to remove it to a safer place, which they failed to do, and one of them, Mr. Farris, at Huntsville, Ala., on my requesting him to move it to a place of safety, refused to have it removed, he stating that it was where the officials had put it and there it must stay. I examined the barrel/s some time after it was seized, and found that none of them leaked. We offered to pay Mr. Farris the drayage if he would remove it. I know the whiskey was being stolen from the fact that the barrel/s were full when we put the whiskey in said commission house, and on examining it some time thereafter I found that many of the barrel/s had been emptied to some extent, some more than others. This was the occasion when I tried to procure Mr. Farris to remove it to a place of safety. Mr. Farris was a deputy collector at Huntsville, Ala.

Int. Please examine the papers marked Exhibit A and B to this

157 your deposition, and state if at any time since the manufacture of the whiskey hereinbefore mentioned you received through the post-office, at your residence, or in any other manner, any notice similar in form and substance like unto said Exhibit A, with the appropriate blanks filled therein relating to any balance due upon the whiskey you have been speaking about, or have you ever received any demand in any way similar in form and substance to said Exhibit B, with the blanks appropriately filled and relating to said balance of taxes due on said whiskey.

Ans. I never have.

Int. 7. When did you cease to make whiskey under said firm of Alexander & Co.?

Ans. In March or April, 1867, immediately after the seizure of said

whiskey. The Government immediately seized our distillery and fixtures, mules, and stock, but subsequently released these things. But said firm manufactured no more whiskey.

Cross-examined:

158 1. Did the whiskey remain in the commission house where you had placed it after it was seized?

A. Yes, sir.

2. What relation was W. M. Alexander to you and any other members of your firm?

A. He was the father of myself and N. B. Alexander.

3. Did you pay any of the tax on the whiskey, or did the firm pay any of the tax; did you not simply give a bond to Farrar for the tax?

A. It seems to me we paid some, but I will not say positively that we did. I know we gave a bond to Farrar.

Re-examined:

1. Was W. M. Alexander at any time during the sale of said whiskey in any manner acting as the agent of your firm or of any member of it? What became of the 20 bbls. of said whisky which was shipped to Memphis?

Ans. To the first sentence of said question I answer no. I do not know what became of the 20 barrels which we shipped to Mem-
159 phis. E. L. Allen was the member of the firm who looked after that portion of the whiskey, and I cannot remember what disposition he made of it.

2. Did your firm ever pay Shankland, Sprague & Co. any storage for said whiskey? Did they ever account to Alexander & Co. for any of the lost or stolen whiskey either in storage or in any other manner?

A. If any of the firm ever paid Shankland, Sprague & Co. any storage for said whiskey, I do not know it. I did not I know. Said Shankland, Sprague & Co. never accounted to us for any of said lost or stolen whiskey, either in storage or in any other manner.

And further saith not.

W. S. ALEXANDER.

W. M. ALEXANDER next called, deposing, says as follows:

Int. 1. What is your age; were you at any time employed, and, if so, by whom, to sell a lot of whiskey belonging to the firm of Alexander & Co., of Kelso, Tennessee; if so, about how long were you engaged in selling the same? About what price per gallon did you sell it, what
160 was the gross amount of your sales, as near as you can state; what disposition did you make of the proceeds of said sale?

A. I am sixty-four years of age. I was employed by Joseph Ramsey, of Shelbyville, Tennessee, who was at the time U. S. collector of internal revenue for this district, to sell a lot of whiskey belonging to the firm of Alexander & Co., of Kelso, Tennessee. This was in 1866 or 1867. I cannot tell exactly how long I was engaged in selling the whiskey, but it was several months. My recollection is that I sold it at $3.00 or $3.25 per gallon. The gross amount of my sales amounted to some $3,100 or $3,200.00. I think I paid a portion of it to Sam. Farrar, the deputy collector of Lincoln County of internal revenue, and I think I paid a portion of it to said Ramsey.

I think I was allowed about $500 for my services, which I retained out of the $3,100 or $3,200 aforesaid.

Int. 2. What was Lincoln County whiskey, of the character and quality of which you have been speaking, worth per gallon at the time you were selling said lot of whiskey in Huntsville, Alabama?

A. It was worth from $3.00 to $3.25 per gallon.

161 Int. 3. Did you discover while you were disposing of said whiskey that any of it was being stolen; if so, did you, at any time and how often, and to whom, as far as you can recollect, did you communicate the fact that it was being stolen:

A. I don't know that I ever said it was being stolen, but I did discover that it was disappearing very rapidly, and I said to John Farris, the deputy collector at Huntsville, to said Ramsey, and to Farrar, at Fayetteville, that there was a great loss occurring with said whiskey. Some three of the barrels of the whiskey were found to be nearly entirely empty.

Int. 4. Did you account to the said Ramsey and Farrar for all the whiskey of the lot of which you have been speaking, which *which* did or could have come into your charge under your agency by the use of the diligence required of you under your appointment from said Ramsey?

A. I did.

Int. Describe the house in which said whiskey was stored while you were selling it.

A. The house was a large house near the railroad depot. It
162 was, I think, a forwarding and commission house. The whiskey was in a large open room, which was not locked in the day time. I know I could go to the whiskey whenever I wanted to without having to unlock any door. The whiskey was stored in the back of the room on the same floor with other goods.

Int. Why, if you had any reason for so doing, did you not speak of said whiskey as being stolen?

A. It was in charge of those revenue officers, and as a matter of delicacy I did not want to speak of it in that way.

X-ex:

1. You speak of said whiskey being in charge of the revenue officers; now, were not you a revenue officer or agent, in whose charge it was?

A. I was no revenue officer; I had no charge of it, except to go and sell it and dispose of it.

2. Who had the keys to the house?

A. The owners of it; I think the name was Shankland, Sprague & Co.

3. Did you give any bond to Ramsey or any one else for the faith-
163 ful disposition of the spirits and faithful on over the proceeds?

A. I don't think I did.

4. Was there any storage paid to the commission merchants in whose house it was stored? If so, who paid them, and how much was paid?

A. I don't remember how much was paid, but some was paid I am satisfied; I don't remember paying it myself. I don't know who paid the storage.

5. Did you ever hear any one say who paid the storage?

A. No, sir; I don't remember that I did.

6. You were satisfactory as an agent to sell, to the firm of Alexander & Co., were you not?

A. Yes, sir; I was satisfactory to them.

7. Is that firm of Shankland, Sprague & Co. still in existence?

A. I don't think it is.

8. They were considered responsible merchants at the time, were they not?

A. I reckon they were. I don't know how that is.

164 9. Was there anything said about the firm of Shankland, Sprague & Co. taking whiskey in pay for storage?

A. I think there was.

W. M. ALEXANDER.

Waiving formal caption and certificate we agree that the foregoing deposition of W. S. Alexander, and W. M. Alexander may be read as evidence in the above-styled cause, subject to exception above for competency.

This May 17, 1881.

J. W. NEWMAN, *for Def'ts.*
G. N. TILLMAN.

The United States by their attorney except to all questions and answers in the foregoing depositions relating to the appointment of W. M. Alexander as agent of the Government or Revenue Department, as being secondary evidence & incompetent.

May 17, '81.

G. N. TILLMAN,
Att'y for U. S.

STATE OF TENNESSEE,
Lincoln County:

I, James W. Goodwin, a commissioner of the circuit court of the United States for the middle district of Tennessee, hereby certify that the foregoing depositions of W. S. Alexander and W. M. Alexander were taken in my office in the town of Fayetteville, Tennessee, on the
165 17th day of May, 1881, in the presence of J. W. Newman, att'y for the defendants, and J. N. Tillman, asssitant district attorney for middle district Tennessee, one of the solicitors for the complainant, and that the same were sworn to and signed by the said M. S. Alexander and W. M. Alexander, in my presence, and that the foregoing depositions have been in my possession since the taking of the same, and have not been changed or altered in any way whatever.

This December 2d, 1881.

Certificate of assessment.

UNITED STATES INTERNAL REVENUE
COLLECTOR'S OFFICE, 5TH DISTRICT, TENNESSEE,
Nashville, April 27th, 1881.

I hereby certify that the July list, 1867, old 4th district of Tennessee, Joseph Ramsey, collector, has been carefully examined in this office; that an assessment appears thereon, page 5, lines 1 and 2, against Alexander & Co., of Fayetteville, Tennessee, for $2,156.06, on which there was paid $707.03, leaving a balance of $1,449.03, for which, with penalty, interest,

and costs, real estate was sold under distraint and purchased for the United States.

The original list, nor any other paper that I have been able to discover, does not show that any demand was made for said taxes before the distraint warrant was issued.

W. M. WOODCOCK,
Coll'r.

166 *Deed.*

R. S. Dauthat to E. L. Allen—Deed.

For and in consideration of the sum of $950 paid and to be paid as follows: $500 in cash, the receipt of which is hereby acknowledged, and the sum of $450, to be paid on or before the 12th day of December, 1875, for which a note is this day executed by E. L. Allen, with C. S. Wilson as security, and by me transferred to the First National Bank of Fayetteville, bearing interest after maturity, until paid, at the rate of ten per cent. per annum, I hereby transfer, sell, and convey unto E. L. Allen the following described house and lot, situated in the town of Fayetteville, county of Lincoln, State of Tennessee, civil district No. 8, and bounded as follows:

Beginning on M. M. Dean & Co.'s NE. C. and running E. with College street 25 feet & 4 inches, to W. E. Turley's NW. C.; thence south 90 feet, to Albert Bonner, N. B. L.; thence west 26 feet, to M. M. Dean & Co.'s SE. C.; thence 90 feet, to the beginning. To have and to hold said house and lot unto the said E. L. Allen, his heirs, and assigns forever.

I covenant with the said E. L. Allen that I am lawfully seized of said house and lot, and have a good right to convey the same, and that the same is unencumbered, and I hereby bind myself, my heirs, and representatives to warrant and forever defend the title to the same
167 against the lawful claims of all persons whomsoever. But a lien is hereby retained on said house and lot for the payment of the above described note.

This 16th day of Febr'y, 1875.

R. S. DAUTHAT.

Witness:
W. E. WOODS,
M. W. WOODARD.

STATE OF TENNESSEE,
Lincoln County:

Personally appeared before me, Paul D. Boyce, clerk of the county court of Lincoln County, said State, R. S. Dauthat, the bargainer, with whom I am personally acquainted and acknowledged that he executed the foregoing instrument for the purpose therein contained.

Witness Paul D. Boyce, clerk of said court, at office this 27th day of February, 1875.

P. D. BOYCE, *Clerk.*

Rec'd Febr'y 27th, 1875, at 9.40 o'clock a. m., and registered same day.

STATE OF TENNESSEE,
Lincoln County:

I, B. B. Thompson, register for said county, do certify that the foregoing instrument is a true and perfect copy of a deed that was received in said office Febr'y 27th, 1875, and is now of record in said office in record Book I, pages 452 & 453.

Given under my hand at office, in Fayetteville, this October 8th, 1879.

B. B. THOMPSON,
Register.

Filed Oct. 20, '79.

LEWIS T. BAXTER, *Clk.*

168 *Deed.*

E. L. Allen to C. S. Wilson.

Filed Oct. 20, '79.

LEWIS T. BAXTER, *Clk.*

Know all men by these presents that I, E. L. Allen, have this day bargained and sold, and do hereby transfer and convey, to C. S. Wilson for the sum of $2,000, paid and to be paid, certain lots situated in the town of Fayetteville, Tennessee, and bounded as follows: One bounded on the north by James Vaughan, on the east by the Shelbyville and Fayetteville turnpike road, on the south by a street and the property of W. N. Wright, on the west by a lot owned by W. W. Thompson & wife.

Another lot bounded on the north by a street and the property of D. P. Holman, on the east by a lot of Alex. Johnson, on the south by a lot of Louis Bright, on the west by the property of J. G. Woods; and the other my undivided half interest in the livery stable & ground now occupied by E. C. McLaughlin, and bounded on the north by the property of J. G. Gill, on the east by the property formerly owned by R. Farquaharson, on the south by a street and the property of C. S. Wilson, on the east by a street leading from the square to the Rock bridge; and the house and lot now occupied by T. J. Carter for a saloon and bounded on the north by a street, on the east by the property of B. F. Goodrich, on the south by the property of Bob Bonner, on the west
169 by the property of Dean & Neal, being the same house and lot I bought of Douthat, to have and to hold the same, to the said C. S. Wilson, his heirs and assigns forever. I do covenant with the said C. S. Wilson that I am lawfully seized of said lots, and have a good right to convey the same. I do further covenant and bind myself and heirs to forever defend the title to said lots to C. S. Wilson against the lawful claims of all persons.

Witness my hand and seal this the 14' day of January, 1876.

E. L. ALLEN.

STATE OF TENNESSEE,
Lincoln County:

Personally appeared before me, Paul D. Boyce, clerk of the county court of Lincoln County, said State, E. L. Allen, the bargainer, with whom I

am personally acquainted, and acknowledged that he executed the foregoing instrument for the purposes therein contained.

Witness Paul D. Boyce, clerk of said court, at office this 14th day of January, 1876.

P. D. BOYCE, *Clerk.*

STATE OF TENNESSEE,
Lincoln County:

I, B. B. Thompson, register for said county, do hereby certify that the foregoing deed was received Jan'y 14th, 1876, at 10 o'clock a. m., so entered in note book No. 3, page 103, and registered, together with the clerk's certificate, in Record Book I, pages 198 & 199.

Witness my hand, at office in Fayetteville, this Jan'y 15th, 1876.

B. B. THOMPSON,
Register.

170 *Deed.*

John Y. Gill, sp'l com'r, to Hampton & Wilson.

Whereas a decree of the county court of Lincoln County, rendered at the November term, 1872, in the cause of G. B. Miller & others vs. W. G. Miller and others, & entered on page 223 of minute book F, John Y. Gill, clerk of said court, was appointed sp'l commissioner, and was directed to sell certain lots known as the Miller block, and did on the 21 day of December, 1872, sell at public auction the real estate hereinafter described to E. C. McLaughlin and T. J. Price, for the sum of $1,000, as appears from the report of said special commissioner made in said cause to the January term, 1873, and entered on page 293 of minute book F. And whereas by a subsequent decree of said court, rendered at the July term, 1876, in said cause, the said special commissioner was directed to resell said real estate hereinafter described, to enforce the vendor's lien (for cash), and said special commissioner did on the 2d day of June, 1877, after first giving legal notice of same, sell the same, when
171 M. D. Hampton and C. S. Wilson became the purchasers at the sum of $415.00.

Now, therefore, in order to carry into effect said sale in pursuance to said decree, and in consideration of the sum of $415.00 paid to said special commissioner, doth hereby transfer and convey to the said M. D. Hampton and C. S. Wilson, their heirs and assigns forever, lot No. 7, of Miller block, known as the stable lot, situated in Lincoln County, and bounded on the north by E. L. Allen's lot, Gill store, running, 160 feet to Farquarharson lot; thence north 60 with Farquarharson's line, to a stake; thence west with an alley 160 feet, to Bridge street; thence north 60 feet, to the beginning, to have and to hold said real estate with all the improvements thereto belonging, to the said Hampton & Wilson and their heirs forever.

In witness whereof John Y. Gill, as special commissioner, hath hereunto set his hand this 6 day of Oct., 1877.

JOHN Y. GILL,
Sp'l Com'r.

STATE OF TENNESSEE,
Lincoln County:

Personally appeared before me, Paul D. Boyce, clerk of the county court of Lincoln County, said State, John Y. Gill, special com'r, the bargainer. with whom I am personally acquainted, and acknowledge, that he
172 executed the foregoing instrument for the purposes therein contained.

Witness my hand at office this 6th day of October, 1877.

PAUL D. BOYCE, *Clerk*,
By JOHN THOMISON, *D. C.*

Rec'd October 6th, 1877, at 4 o'clock p. m., and registered same day.

STATE OF TENNESSEE,
Lincoln County:

I, B. B. Thompson, register for said county, do certify that the foregoing deed was received in my office October 6th, 1877, and that the foregoing is a true and perfect copy of the same, and the same is now of record in said office, in record book K, pages 331 & 332.

Given under my hand at office this Oct. 17th, 1879.

B. B. THOMPSON,
Register.

Filed Oct. 20th, 1879.

LEWIS T. BAXTER, *Clk.*

Deed.

Hampton & Wilson to John Y. Gill.

Filed Oct. 20th, 1879.

LEWIS T. BAXTER, *Clk.*

For and in consideration of the sum of $1,425 to be paid as follows, to wit, one note signed by J. T. Rodes and wife, due Dec'r 25th, 1880, and bearing interest at 6 % from Dec., 1878, which is this day assigned and transferred to us, and one note signed by Jno. Y. Gill, due 12 months from this date, bearing interest at 6 % from date, and one note due
173 two years from date, and bearing interest from this date, said last two mentioned notes being made payable to M. D. Hampton and C. S. Wilson:

We have this day bargained and sold, and do hereby transfer and convey, to John Y. Gill the following described property: Situated in the town of Fayetteville, Lincoln County, Tennessee, and on west by Bridge street; south by an alley, running east & west from said Bridge street; east by lot formerly belonging to R. Farquharson estate, now owned by A. Powers; and on the north by lot known as Gill's store-house lot, and which lot fronts 60 feet on Bridge street, running back 160 feet to said Farquharson lot, and is the same lot on which the livery stable is situated, and was purchased by us at a sale for the purchase-money by decree of the county court in sale of lands G. B. Miller, dec'd and the boundaries are set out in a deed from John Y. Gill, special commissioner of said court,

of this date, to which reference is here made for a fuller description. We covenant with said John Y. Gill that we are lawfully seized of said lot herein conveyed and have a good right to convey the same, and that the same is unincumbered, except as hereinafter set out, to wit: Said lot and stable had been leased for ten years and there is yet about two years
174 that said lease has to run before it expires, and we herein convey all of our right, title, claim, and interest in said lease, as well as in hereinbefore conveyed property, subject to all our rights in said cause and with all the incumbrances thereinbefore mentioned. We further bind ourselves, our heirs, and representatives to warrant and defend the title to said property herein conveyed to the said John Y. Gill, his heirs and assigns, against the lawful claims of all persons whomsoever.

A lien is herein retained on the property herein described to secure the payment of the notes mentioned, executed for the purchase money.

Witness our hands and seals Oct. 6th, 1877.

M. D. HAMPTON. [SEAL.]
C. S. WILSON. [SEAL.]

STATE OF TENNESSEE,
Lincoln County:

Personally appeared before me, Paul D. Boyce, clerk of the county court of Lincoln County, said State, M. D. Hampton & C. S. Wilson, the bargainers, with whom I am personally acquainted, and acknowledged that they executed the foregoing instrument for the purposes therein contained.

Witness my hand at office this 6th day of October, 1877.

P. D. BOYCE, *Clerk.*

Rec'd October 6th, 1877, at 4 o'clock p. m., and registered same day.

175. STATE OF TENNESSEE,
Lincoln County:

I, B. B. Thompson, register for said county, do certify that the foregoing is a true andperfect copy of a deed that was received in my office October 6th, 1877, and is now of record in said office, in record book "K," pages 332 & 333.

Given under my hand at office in Fayetteville this Oct. 17th, 1879.

B. B. THOMPSON,
Register.

Deed.

D. B. Cliffe, coll'r, to United States.

Whereas an assessment as hereinafter specified was made against Alexander & Co., of the State of Tennessee, and county of Lincoln, amounting to $1,484.70 upon the July list for 1867, said assessment having been made by the assessor of the 4th district of Tenn. (now a part of the 5th district), under and by virtue of the internal-revenue laws of the United States, and said list having been returned for collection to the collector of internal revenue for said district; and whereas said assessment was not paid, and sufficient personal property to pay the same not having been found, the said collector, through his deputy, proceeded to make distraint upon

the following described property belonging to E. L. Allen, a member of said firm of Alexander & Co.:

176 One lot of land in Fayetteville, Lincoln County, bounded on the north by land of James Vaughan, on the east by the Shelbyville and Fayetteville turnpike, on the south by a street and land of W. N. Wright, and on the west by land of W. W. Thompson and wife.

One lot in Fayetteville, bounded on the north by a street and land of D. P. Holman, on the east by land of Alex. Johnson, on the south by land of Lewis Bright, and on the west by land of J. G. Woods.

One house and lot in Fayetteville, now occupied by T. J. Carter as a saloon, and bounded on the north by a street, east by land of B. F. Goodrich, south by land of Tobe Bonner, and west by property occupied by Drew & Neeley.

Also an undivided one-half interest in the livery stable and ground now occupied by E. McLaughlin, bounded on the north by property of J. Y. Gill, east by property formerly owned by Farquharson, south by a street, and west by a street.

Also a tract of land in said county and State, on Elk River, formerly owned by Cornelius Allen, deceased, and sold by the chancery court as lot No. 2, in the case of Wm. Allen vs. R. S. Woodard, executor, and bounded as follows:

177 Beginning on a pin-oak standing on the south bank of Elk River, the NE. corner of lot No. 1 of said Allen's land, and running thence north with the north boundary line of lot No. 1, 272 poles to an elm, thence up the river 716 poles to the beginning, containing 292 acres, and 138 poles, by survey dated Nov'r 12th, 1872.

And whereas the said collector of internal revenue, through his deputy, after having advertised and given notice according to law, did offer the said property, each lot separately and in the order named, at public sale, as follows:

At the court-house door in Fayetteville on the 24 day of March, 1876:

Lot No. 1, at the minimum price of $364.

Lot No. 2, at the minimum price of 212.50.

Lot No. 3, at the minimum price of 414.

Lot No. 4, at the minimum price of 818.

At the forks of the road near Hamilton's, in Lincoln County, on the 25th day of March, 1876: Lot No. 5 (the tract of land described herein), at the minimum price of $1,351.85—in all, the amount of said assessment, including penalty, interest, and costs. And said property having been offered for sale, each lot or tract separately and in the order named, and no person offering the amount of said minimum price for any one of them they were duly declared purchased for the United States.

Now, therefore, I, D. B. Cliffe, collector of internal revenue for the 5th district of Tennessee, the period allowed by the internal-revenue

178 laws of the United States for redemption of said property having expired, in consideration of the premises, do hereby certify, transfer, and convey to the United States all the right, title, and interest of the said Alexander & Co. in the said described property, or to which they or any of them were entitled at the dates on which the liens of the United States severally attached, to have and to hold the same unto the United States in as full and ample a manner as I, as collector of internal revenue

aforesaid, am authorized and required to do by the internal-revenue laws of the United States, but no further or otherwise.

In witness whereof I have hereto set my hand and affixed my official seal this 29th day of September, 1877.

[SEAL.] D. B. CLIFFE,
Collector.

Witnesses:
J. H. HARDING.
C. H. SALTMARSH.

STATE OF TENNESSEE,
Davidson County:

Personally appeared before me, James T. Bell, clerk of the county court of said county, J. H. Harding and C. H. Saltmarsh, subscribing witnesses to the attached deed, who being first duly sworn depose and say
179 that they are personally acquainted with the within-named D. B. Cliffe, collector, the bargainer, and that he acknowledged the same in their presence to be his act and deed for the purposes therein contained.

Witness my hand at office this 29th day of Sept., 1877.

JAMES T. BELL,
Clerk.

STATE OF TENNESSEE,
Lincoln County:

I, B. B. Thompson, register, certify that the foregoing deed was received October 9th, 1877, at 8 o'clock p. m., so entered in note book No. 3, page 137, & registered in record book K, pages 333, 4, & 5.

Witness my hand at office this October 9th, 1877.

B. B. THOMPSON,
Register.

Filed Aug. 15, '78.

LEWIS T. BAXTER,
Clerk.

Mortgage.

E. L. Allen to M. D. Hampton, cash'r.

In consideration of the sum of $750, this day advanced to me, and for the further consideration of securing my indebtedness heretofore incurred to the Lincoln Savings Bank, I hereby transfer and convey to M. D. Hampton, cashier of said bank, the following mentioned and described property, viz:

180 All of the growing crop of cotton and corn on my tracts of land situated respectively in the 1st and 12th civil districts of Lincoln County, Tennessee, there being of the same about ninety-five acres of cotton and about sixty acres of corn; also 40 head of hogs—about 18 pork hogs, the rest stock hogs—and all of the farming implements on said places, and about $100 worth of hay on the same. This conveyance is made with the understanding that I, as the agent of said Hampton, shall superintend the gathering and storing, &c., of the crops herein conveyed, and if on or before the 25th day of December, 1876, I should satisfy to M. D. Hampton the considerations mentioned in the first part of this instrument, then this

conveyance is to be null and void, otherwise to remain in full force and effect, and said Hampton is authorized, after giving ten days', notice, to sell said property at public sale to the highest bidder for cash.

E. L. ALLEN.

SEPT. 18TH, 1876.

STATE OF TENNESSEE,
Lincoln County:

Personally appeared before me, Paul D. Boyce, clerk of the county court of Lincoln County, said State, E. L. Allen, the bargainer, with whom I am personally acquainted, and acknowledged that he executed the foregoing instrument for the purposes herein contained.

181 Witness Paul D. Boyce, clerk of said court, at office this 18 day of Sept., 1876.

P. D. BOYCE,
Clerk.

STATE OF TENNESSEE,
Lincoln County:

I, B. B. Thompson, register for said county, do hereby certify that the foregoing mortgage was received September 18, 1876, at 1.20 o'clock p. m., so entered in note book No. 3, page 167, and registered, together with the clerk's certificate, in trust-deed book No. 4, pages 172 & 173.

Witness my hand at office this Sept. 19, 1876.

B. B. THOMPSON,
Register.

Filed Oct. 20, '79.

LEWIS T. BAXTER, *Clk.*

Mortgage.

E. L. Allen to M. D. Hampton.

STATE OF TENNESSEE,
Lincoln County:

I have this day sold to M. D. Hampton, for the sum of one dollar, to me in hand paid, and the other considerations hereinafter mentioned, eleven head of mules described as follows: One bay mare mule about nine years old, named Het; one black horse mule, about eight years old, named Jo; one black mare mule, about 8 years old, named Kit; one bay mare mule, about 12 years old, named Jane; one black horse mule, about five years old, named Tobe; one bay horse mule, about six years old, named Logan; one mouse-colored mare mule, about 6 years old,

182 named Het; one black horse mule, about six years old, named Sam; one sorrel mare mule, about ten years old, named Huldy; one bay horse mule, about eight years old, named Dick; and the four-horse wagon and harness to which the last four mentioned mules are working to, in the town of Fayetteville. The first seven mentioned mules are on my farm in the first district.

But this sale is made for the following purpose, and no other; that is to say, I am indebted to the Lincoln Savings Bank in the sum of $1,949.23,

DECEMBER 2D, 1882.

Present, Hon'l. D. M. Kay, U. S. judge, &c.

UNITED STATES
vs.
C. S. WILSON ET ALS.

In this cause it is ordered that Andrew McClain, U. S. district attorney, be allowed thirty dollars, in addition to the docket fee of $20, for his services in this cause, a final decree having been rendered in said cause at the present term.

UNITED STATES
vs.
C. S. WILSON ET AL.

In this cause the complainants, by Andrew McClain, U. S. dist. att'y, pray an appeal to the Supreme Court of the United States from the decree rendered at the present term in said cause, which is granted.

187 In equity in the United States court at Nashville, Tenn.

UNITED STATES
vs.
ALLEN ET AL

The bill in this case is filed to remove a cloud upon the title of the United States to the real estate described in the bill. Alexander & Co. were distillers in Lincoln County, Tennessee, in 1866–7. They were assessed on the July list for 1867 the sum of $3,057.16. The tax as assessed, and interest and penalty thereon amounted to said sum. On the 21st day of January, 1876, the collector issued his distress warrant for the collection of this money, in which he recites that more than ten days had elapsed since the payment of said taxes was demanded. This warrant went into the hands of W. B. Nicks, a deputy collector, and on the 22d day of January, 1876, he levied the warrant upon the real estate claimed in the bill as the property of E. L. Allen, a member of the firm of Alexander & Co. It is stated in said levy that demand of payment of said tax had been made on the 2d of January, 1869, and also on the 17th December, 1875. The lands were sold and bid in for the United States, and a collector's deed executed therefor in September, 1877. On
188 the 14th day of January, 1876, Allen had conveyed this property to C. S. Wilson, and the bill is filed to declare this deed void: 1, because the taxes were due and had been demanded before the execution of the deed to Wilson, and 2, because it was made to hinder and defraud the Government in the collection of its debt.

The first question to determine is whether the United States has title to these lands. The earlier proceedings upon which this title rests were during a period when the internal-revenue laws were little understood in this region of the country by the parties against whom taxes were assessed or the officers charged with the assessment and collection of these taxes. The record in this case furnishes abundant evidence of that fact. The title of

the Government rests upon a lien of an extraordinary nature. The lien provided by the law is a lien upon personal property as well as land. It is a lien on property in possession and upon all rights to property depending on contracts and unexecuted contracts. It not only creates a present lien, but it relates back. The demand may be made long after the maturity of the tax, and will create a lien which relates back and establishes itself upon the property. (4 Dillon, 71.) There is no limit as to the time, so that innocent parties and purchasers may be involved and ruined.

189 The assessment is ex parte. The party against whom the tax is assessed has no opportunity to resist or combat it. The demand for payment is his notice, and this is after an assessment which has the force of a judgment awarding fi. fa. The levy of the warrant, the sale, and the collector's deed all follow without affording the tax-payer any forum for opposition, and it is only when a judicial tribunal is invoked to place the purchaser in possession that he whose property has thus been sold is in a condition to be heard. The law upon which such titles are predicated will be strictly construed. Failure to comply with its provisions will not be cured by presumptions and intendments. The steps required must be literally taken, and must be made evident by clear and conclusive testimony. In order to support and enforce a statutory lien for taxes all the prerequisites of the law granting the lien must be strictly complied with. (Thatcher vs. Powell, 6 Wheat., 119; Parker vs. Rules, lesser, 9th Cranch, 64; Early vs. Doe, 16 Howard.) Section 3184, R. S., says: Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein to be left at his dwelling or usual

190 place of business, or to be sent by mail, stating the amount of such taxes, and demanding payment thereof. If such person does not pay the taxes within ten days after the service or sending by mail of such notice, it shall be the duty of said collector or his deputy to collect said taxes with a penalty of five per cent. additional upon the amount of taxes and interest at the rate of one per centum per month.

Section 3185, R. S., provides that all returns to be made monthly by any person liable to tax shall be made on or before the 10th of the month, and the tax assessed shall be returned by the Commissioner of Internal Revenue by the last of the month; and that all returns for which no provision is otherwise made shall be made on or before the 10th of the month succeeding the time when the tax is due and liable to be assessed, and shall be due and payable on the last of the month in which the assessment is made, and if not paid the penalty and interest follows nonpayment; "Provided, that notice of the time such tax becomes due and payable is given in such manner as may be prescribed by the Commissioner of Internal Revenue. It shall then be the duty of the collector in case of the non-payment of said tax on or before the last day of the

191 month as aforesaid, to demand payment thereof, with five per centum added thereto and interest at the rate of one per centum per month, as aforesaid, in the manner prescribed by law; and if said tax, penalty, and interest are not paid within ten days after such demand, it shall be lawful for the collector or his deputy to make distraint therefor, as provided by law." The proceedings in this case were under these sections.

It so appears from their face. The law requires diligence of the officers charged with its execution, but in the case before us the taxes became due and payable in July, 1867, and amounted to $1,484.70. They were not assessed and the penalty and interest fixed until said penalty and interest amounted to $1,573.10, a sum larger than the tax. The distress warrant did not issue until the 21st January, 1876, seven years after the taxes accrued. Allen had purchased and sold property in the mean time and the rights of innocent persons had intervened. These were great and inexcusable laches on the part of the officers of the Government, and whilst this may not affect the title of the United States to the property, it does not add weight to its equitable remedy, but, on the contrary, furnishes an additional reason why strictness should be required in the steps
192 necessary to support the title.

Unquestionably a demand, on the part of the collector or his deputy, of the payment of the tax, penalty, and interest was a necessary prerequisite. This is so regarded by the United States, for the Commissioner of Internal Revenue has, by regulation, provided not only a form of demand but of the notice which must precede it. There must be under the proviso in section 3185 not only a demand, but it must be preceded by a notice of the time when such assessment becomes due and a demand for payment. Is the required demand established clearly, satisfactorily in this record? The distress warrant recites that "more than ten days had elapsed since said taxes were demanded." The return of the deputy collector says that demand was made on the 2d of January, 1869, and also on the second of December, 1875. These recitals are sufficient to establish prima facia a demand, but is not this prima facia case overturned by the proof? There is no record or writing anywhere sustaining these recitals. The warrant was issued January 21, 1876, and levied the following day. Seven years had passed between the first demand and the levy containing the recital of the demand. Ramsey, who was col-
193 lector in 1869, had gone out of office, had been succeeded by Mullens, and Mullens in turn had been succeeded by Bryant. The deputy collector in 1869 was named Farrar. In 1876 that place was filled by Nicks. Ramsey does not prove any demand in January, 1869. He says that he made various demands verbally and in writing by himself and by his deputy, Farrar, and that these demands were made from the latter part of 1867 through the year 1868. He proves no demand in 1869. Farrar, Bryant, and Nicks are not examined to prove a demand. I take it that as complainant's title on its face rests on the demands of January, 1869, and December, 1875, these demands must be established or at least one of them. A failure to do this would not be cured by proving other demands, but if it were, the other demands are not sufficiently proven. The demand required is not an informal one, a mere dun. It must be formal and specific. The law requires that within ten days after receiving his list of taxes from the Commissioner of Internal Revenue the collector or his deputy shall give notice to each person liableto pay
194 taxes, to be left at his dwelling or place of business, or sent by mail, stating the amount of taxes and demanding payment thereof. (Section 3184, R. S.) The notice must be in writing or print, or it could not be so left or sent by mail, and it must be given in one or the other method. Not only so, but it must state the amount of taxes and demand payment

thereof. How could Nicks know or ascertain that these things had been done seven years before when there is no record, book, or paper anywhere showing the fact, nor proof of any one establishing it? Nor does his recital that the demand of December, 1875, have any better support.

Titles should not be divested out of owners and purchasers in proceedings like these where so much laches, carelessness, and uncertainty appear. It is not necessary to discuss the question as to whether a defective prior demand would be cured by a subsequent one, made in due form, as in my opinion neither demand is satisfactorily established in fact or form. To escape this conclusion the district attorney earnestly, ably, and with great force argues that the assessment in this case was under Sec. 3253, R. S., in which no such formality of demand is required as in Secs. 3184,
195 3185; that these sections in terms only apply to cases where no other method is provided, and it is insisted that another method is given in section 3253 in a case like this. It is true the liquors were illegally removed, but in this the collector and his deputy joined Alexander & Co. All the parties concerned were ignorant of the law applicable in such instances, and the letter of the Commissioner of Internal Revenue dated Feb'y 18, 1876, treats the removal as having been made in an "informal manner" and not as working a forfeiture of the spirits. They were simply taxed as though the removal had been legal. In case of a legal removal the taxes should have been paid before the removal, and it was only the tax thus due which was assessed. But if I am in error in this, section 3253 expressly provides that its terms "shall not exclude any other remedy or proceeding provided by law," and the remedy and proceedings in this record are clearly under Secs. 3184–5.

The conclusion I arrive at is that complainant has not acquired title to the lands sued for or any interest in them, and as the bill seeks no equity save such as would grow out of an ownership, legal and equitable,
196 of the lands and lots or some interest therein it must be dismissed. But as the assessment of taxes seems to have been valid, and as Alexander & Co. were at fault as well as the revenue officers in the matters which led to this litigation, I shall direct that all the costs in this litigation incurred or placed thereon by the defendants be paid out of the estate of E. L. Allen, for which execution may issue.

UNITED STATES OF AMERICA,
Middle District of Tenn.

I, Lewis T. Baxter, clerk of U. S. circuit court for said district, do hereby certify that the foregoing is a true, perfect, and complete transcript and copy of the record and proceedings had in a certain cause lately pending in said court, wherein the United States were plaintiffs and C. S. Wilson et al. defendants, as the same appear of record in my office.

Witness my hand and the seal of said court this Nov'r 1, 1883.

[SEAL.] LEWIS T. BAXTER, *Clk.*

(Indorsement on cover:) No. 226. The United States *vs.* C. S. Wilson, appellant. M. Tennessee, C. C. U. S. Filed 9th May, 1883.

RECEIVED
APR 9 1886
JAMES H. McKENNEY,
CLERK.

118-86

Supreme Court of the United States.

OCTOBER TERM, 1885.

THE UNITED STATES
vs.
C. S. WILSON, *et alios.*
No. 226.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

Brief for the United States.

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STATEMENT.

This is a bill filed by the United States for the purpose of removing a cloud upon the title of certain parcels of land situate in the county of Lincoln, Tennessee, which had been bought

in for the United States at a sale made under a warrant of distress issued by a collector of internal revenue, and which the delinquent tax payer, as whose property the land was levied on and sold, had conveyed to parties, claiming to be purchasers *bona fide*, for value, after the lien of the United States for taxes had attached.

The case made in the bill (pp. 1–4) is this, substantially:

That in July, 1867, the firm of Alexander & Co., of Lincoln County, Tennessee, distillers, were assessed by the Commissioner of Internal Revenue in the sum of $3,057.16, whereof $1,484.07 represented the tax due by them on certain distilled spirits, and the residue thereof the penalty incurred by being in default touching the said tax.

On the 21st January, 1876, the then collector of the 4th collection district of Tennessee issued a warrant of distress for the collection of said tax, which was levied on the 22d of the same month of January, by Deputy Collector W. B. Nicks, on certain parcels of land in Lincoln

County, particularly described in the bill, as the property of one E. L. Allen, now deceased, and then a member of the firm of Alexander & Co.

That on the 25th of March, 1876, the land in question was sold and purchased in the name of the United States, and on the 29th of September, 1877, the then collector conveyed the same to the purchaser.

The bill avers that at the time the tax became due and payable Allen was seized in fee of the said land, and by mesne conveyance transferred the title thereof to the defendant, C. S. Wilson, with a secret trust for the benefit of Allen, and that Allen was insolvent, and that said conveyance was to hinder and defraud complainant in the collection of said tax, and was an assignment within the meaning of section 3466, Revised Statutes.

The bill then avers that one Gill claims some undefined interest in one of the parcels of land; that C. S. Wilson and W. H. Hampton are the administrators of E. L. Allen, deceased; and that

Allen left a widow and several children, naming them.

The bill prays that the conveyance from Allen to Wilson be "declared fraudulent and void;" that the priority and permanency of complainant's lien be decreed; and that said conveyance be removed as "a cloud upon complainant's title," and for relief generally.

The answers.

Wilson & Hampton answered jointly and severally as administrators, and Wilson and Gill in their own right (R., pp 5–9):

They claim the right to make defense upon the injustice or want of equity of the said tax, this being their first opportunity to do so.

That in April or May, 1867, Alexander & Co. had on hand 2,060 gallons of whiskey, worth then in the market $3.50 a gallon, or $6,695; that the tax on the same amounted to $4,750, and, not having the money wherewith to pay it, Alexander & Co. applied to Deputy Collector Farrar for permission to send the whiskey to Memphis,

which was granted on condition the firm gave bond and security to pay the tax so soon as the spirits should be sold in Memphis.

The condition being complied with, the spirits were sent by waggon to Huntsville, Ala., a distance of 30 miles, to be thence shipped by rail to their destination.

That, on arrival at Huntsville, the whiskey was deposited in an old insecure and "very open" frame warehouse near the railway station, it being the purpose to ship the property by rail the next day; but on its arrival it was seized by the collector at that point on the ground that the packages contained more proof gallons than the assessment called for.

It turning out, however, that the spirits were "substantially as originally gauged" the "*charges*" were "*dismissed*" in a few days after the seizure; but the Commissioner of Internal Revenue *or* the collector refused to allow the whiskey to be put in a more secure place or be shipped to Memphis, and appointed an agent "*one* W. M. Alexander," to sell it, from time to time.

That, there being only a local demand for whiskey at Huntsville, the selling it occupied the interval from May to December, 1867, during which time the quantity sold was 850 gallons, the rest having been *lost* to the Government, which received about $2,800 on spirits worth $6,700, leaving a balance of $1,400 of the tax unpaid, which, with 5 per cent. damages and interest at 1 per cent. a month, constituted the claim for which the land in controversy was sold;

That Alexander & Co. repeatedly asked "the Government agent" to ship the spirits to Memphis or remove them to a secure building, informing him "they were being stolen from the old warehouse," and that the agent replied he knew it was so, but "that his orders were that it must remain where it was."

Respondents say that in consequence of the injustice of the Government's demand, Collectors Ramsey, Mullins, and Bryant refused to enforce it until the latter was compelled to do so by a special agent of the Department after a lapse of "nearly nine years," and that if complainant's

demand is enforced at all it should be only to the extent of $1,484.70, and that if interest is allowed it should only be at the rate of six per cent., inasmuch as the notice required by law to be given, before the penalties of the law could attach, was not given "until just before the sale of the lands referred to in complainant's bill;"

Respondents say that between 1867 and 1876 Allen was amply able to pay the demand, and that it was "cruelty" to him to hold up the claim for nine years, "as if it was never to be collected," and then enforce it with the heavy penalty added;

Respondents do not admit the amount in the bill touching the assessment and proceedings leading to the levy and sale of the land, and insist upon strict proof;

Respondent Wilson protests the *bona fides* of the conveyance from Allen to him, and that when it was made he had never heard of complainant's demand, which had "slumbered" in the collector's office at Shelbyville "for nearly nine years," and

that Allen never believed that "so unjust a demand" would be enforced;

Respondent Wilson denies that Allen was insolvent on 14th January, 1876, the date of the deed from Allen to him, or that that deed was a general assignment within section 3466, Revised Statutes.

The answer then goes into some particulars touching one of the parcels of land and some other matters which are not material to the questions arising on this appeal.

The widow of Allen, Alice Allen, also answered (pp. 9–11). She sets up a paper signed by Wilson and bearing even date with the deed, in which it is recited that the deed is given as counter indemnity to Wilson as indorser of Allen's paper. She denies all imputation of fraud in the deed, and insists that the deed being a mortgage only, she is entitled to dower out of the land conveyed, that her right in that behalf is paramount to the claim of the Government, and that she has instituted suit to have her dower admeasured to her.

The heirs and children of Allen answer by guardian *ad litem* (p. 11).

The cause was brought to issue by a replication (pp. 11, 12).

Testimony was taken on both sides.

Complainant's Testimony.

The Government showed by two witnesses, N. J. George and James D. Tillman (pp. 18–21), lawyers residing in Fayetteville, that E. L. Allen was insolvent at the time the deed to Wilson was made, and that that deed embraced all the real estate in which Allen had an interest.

W. M. Woodcock, collector of internal revenue and successor of Collector Bryant, under whose warrant of distress the land in question was seized, was also examined by the Government (pp. 46–54) to prove the assessment against Alexander & Co., the issuing and levy of the distress warrant, the death of Deputy Nicks, and that the signature to the return on the warrant was the handwriting of Nicks.

Witness says that the records of his office do not show that the notice and demand required by section 3184, Revised Statutes, were issued, and produces forms of the demand and notice, and says that the regulations do not require a minute of the date of issuing the notice to be made on the assessment, although it is his practice to make such minute. Witness says that it appears from the condition of the records in his office that his predecessors, Ramsey, Mullins, and Bryant, "omitted to file very many records and papers which should have been filed."

Joseph Ramsey, sometime collector, was examined (pp. 57–59); says he knew the firm Alexander & Co.; that they were assessed in the sum of about $2,800, and that—

> For and on account of said assessment a lot of whiskey was seized at Huntsville, Ala., and the same was subsequently released, *and at the request of the firm I appointed Wiley Alexander to sell the same and pay over the internal revenue into my office.* Wiley Alexander afterwards informed me that he had sold said whiskey, and he paid me about fourteen hundred dollars, leaving a balance of about fourteen hun-

dred dollars behind, which he refused to pay, saying that the Government had on former occasions swindled the firm by seizing some whiskey of theirs in Alabama, and had sold the same; that he had the money in his hands, and intended to protect the firm and his boys.

I made repeated demands of the firm for said balance of assessment. I made the demand as collector. I made the demands in writing and verbally.

I often made the demands myself, personally, and through my deputy, Samuel Farrar.

The demands made by me in writing were addressed to the firm of Alexander & Co., and I made verbal demand for the payment of said assessment of Lee Allen, one of the firm, and I made frequent demands of Wiley Alexander, *who was the father of two of the firm*, and he having sold the whiskey as above stated. These demands were made from the latter part of the year 1867 through the year 1868.

On cross-examination, the witness says that he does not recollect the requirements of the regulations as to demand and notice, but is satisfied all the requirements were complied with, and that none of the parties ever said he had never received "the demand or notice" when he made

personal demands; says he is pretty certain his statement is correct because his attention was "particularly called to the matter" and he had a "good deal of trouble about it."

Says he went out of office in July, 1869; thinks he was "*instructed to hold the whiskey at Huntsville, Ala., and sell it for the purpose of paying the taxes due*, amounting to about $2,800." Says he appointed Wiley Alexander his agent and agent of Government to sell the whiskey *at the request of the firm* and on the recommendation of Beardon, the assessor at Fayetteville. Thinks Deputy Collector Farrar did give Alexander & Co. a receipt for the taxes on their giving a bond and mortgage to secure payment of taxes after the whiskey should be sold.

Respondents' Testimony.

The respondents introduced evidence, both testimonial and documentary.

Wilson testified as to the particulars of the transaction of the deed to him from Allen (pp. 15–17), and stated that Allen offered to have a

suit brought to enforce witness's lien at his own expense, and that his offer to do so sprang from a desire to have witness "get ahead of the United States Government," whose claim he regarded as "grossly unjust."

Respondent Hampton (pp. 17, 18) testifies as to Allen's solvency, and says his credit was good up to the time the distress was levied. He also testifies with some particularity as to his claim to one of the parcels of land.

W. S. Alexander (pp. 60–63) states that himself and Allen and N. B. Alexander constituted the firm of Alexander & Co., and that of the three he alone survives.

That in the spring of 1867, March or April, Alexander & Co. shipped to Huntsville, by wagons, 63 barrels of whiskey, to be sent to Memphis by rail from that point; that 20 barrels were sent to Memphis and seized there by the United States; that the remainder were seized in the same way at Huntsville, where they were stored with a shipping commission merchant

near the depot of the Memphis and Charleston Railroad, to be shipped immediately to Memphis.

That there was no local market for the whiskey in Lincoln, and the firm was desirous to realize on their stock on hand that they might go on with their business, not having the money to pay the taxes.

That Farrar, the deputy collector of Lincoln County, took their bond with security for the amount of the taxes and gave them receipts in full, which are on file as exhibits of his deposition before the Claims Committee of Congress, and this arrangement was made after consultation with Assistant Assessor Bearden, Farrar's father-in-law.

The seizure was made on the charge that it contained more proof-gallons than the assessment covered, but on being regauged the excess was so small that the whiskey was released, there being no evidence of fraud; but, as the Commissioner was of opinion that the removal from the place of manufacture was irregular, he made it a condition of the release that the whiskey should remain and be sold in Huntsville.

Collector Ramsey appointed W. M. Alexander, an old whiskey dealer, agent to sell the whiskey, which he was several months in doing. He realized about $3,200, of which about $2,700 was applied in part payment of the tax, leaving a balance of some $1,400 due the Government. Some thousand or twelve hundred gallons of whiskey were stolen. He complained again and again to the revenue officials that the whiskey was being stolen, and repeatedly asked them to remove it to a safer place. There was no leakage from the barrels. Is shown Exhibits A and B (p. 52), being form of notice of assessment and demand for taxes, and says he never received in any manner any such notices.

On cross-examination he said the whiskey remained after seizure where the firm had placed it before, and that W. M. Alexander was the father of witness and N. B. Alexander.

Can't remember what disposition E. L. Allen made of the whiskey that was taken to Memphis.

W. M. Alexander (pp. 63–65) says he was employed by Collector Ramsey to sell the whiskey,

which he was several months doing. It brought $3 or $3.25 a gallon; the gross amount of sales being $3,100 or $3,200. He noticed that the whiskey was disappearing very fast, and so represented to the revenue officers.

The place in which the whisky was stored was "a large open room, which was not locked in the day-time." Could always go to the whiskey whenever he desired, without unlocking any door.

Decree.

Upon this state of facts the learned circuit court dismissed the complainant's bill (pp. 75), for reasons fully stated in an opinion to be found in the record (pp. 76–79).

Grounds of Appeal.

In support of this appeal it is insisted that the learned court below was in error in holding (1) that the equity of complainant's bill is met and overcome by the answers, and (2) that the bill is not sustained by proof.

Argument.

It is an undisputed fact in the cause that by the assessment list for July, 1867, the firm of Alexander & Co. was assessed in the sum of $1,484.70, and that by the 21st January, 1876, the date of the warrant of distress, the tax, with the accretions of penalty and interest, amounted to $3,057.16, and that for this amount the land in question was distrained (pp. 48–50).

It is also undisputed that Alexander & Co. were at the time of the assessment distillers in Lincoln County, Tennessee, and had produced the whiskey on which the assessment was based.

The whiskey, as we have seen, was removed from the distillery where it was distilled in April or May, 1867, as the answer of Wilson and others informs us, for the purpose of being taken to Memphis to be sold, there being little or no market for it in the place where it was made.

From the moment it left the distillery it was *in delicto*, under provisions of law now represented

by sections 3253 and 3271, Revised Statutes. Section 3253 is in these words:

> The tax upon any distilled spirits, removed from the place where they were distilled and not deposited in bonded warehouse as required by law, shall, at any time, when knowledge of such fact is obtained by the Commissioner of Internal Revenue, be assessed by him upon the distiller of the same, and returned to the collector, who shall immediately demand payment of such tax, and, upon the neglect or refusal of payment by the distiller, shall proceed to collect the same by distraint. But this provision shall not exclude any other remedy or proceeding provided by law.

And section 3271 enacts that "every distiller shall provide, at his own expense, a warehouse to be situate on and to constitute a part of his distillery premises, and to be used only for the storage of distilled spirits of his own manufacture until the tax thereon shall have been paid * * *."

Not only was the tax due by Alexander & Co. collectible by summary demand and by levy, on failure to pay immediately after such demand, but it was clearly liable to be declared forfeited

to the United States under section 3299, Revised Statutes, which provides that "all distilled spirits found elsewhere than in a distillery or distillery warehouse, not having been removed therefrom according to law, shall be forfeited to the United States," it being a *concessum* in the case that there was no warrant of law whatever for the removal. That the collector consented to the removal did not redeem it from criminality.

That the whiskey was *in delicto* when it reached Huntsville, that the distillers were *in morâ* touching the tax, they and those claiming under them are estopped to deny. The evidence *of one of the firm* shows that the whiskey was released from the seizure at Huntsville on a condition prescribed by the Commissioner of Internal Revenue, namely, "*that it should be held at Huntsville, Alabama, and there sold out,*" its removal in the first instance being an irregularity (W. S. Alexander's dep., pp. 61, 62), and Collector Ramsey deposes that "*at the request of the firm*" he appointed Wiley Alexander to sell the whiskey and "pay over the internal revenue into my [his] office."

(Depo., p. 57.) It also clearly appears that Wiley Alexander was the father of the two members of the firm of Alexander & Co. bearing that name.

It being thus proved by one of the concern of Alexander & Co., examined by the defendants in this cause, that the release of the seizure was on condition that the whiskey should be sold in Huntsville and the tax paid out of the proceeds, it is hardly open to the defendants to contend here that a preliminary demand was wanting to make valid the seizure of the real estate for the very same tax in 1876. That compact, founded on the valuable consideration of a condonation of the forfeiture to which the whiskey was liable, is equivalent to the most formal demand and refusal. The transaction constitutes as complete and solemn an estoppel *in pais* as the mind can conceive.

Again, it appears as part and parcel of the irregular proceeding of removing the spirits that Alexander & Co. gave the collector of the district security for the payment of the tax out of

the proceeds of the contemplated sale in Memphis.

Now, even taking the ground assumed by the learned court below, that the seizure of the land in question was under sections 3184 and 3185, Revised Statutes,* we respectfully maintain that in the face of the aforegoing facts it does not lie in the mouth of these delinquent tax-payers or those claiming estates and rights under them to set up want of proof of notice of the assessment or of demand of payment.

But there is satisfactory proof of all the notices required by law, in the recitals to that effect in the warrant of distress, the presumption being that all official acts are done in the way and with the concomitants which the law says shall attend them. This doctrine has received the repeated recognition of this court. (U. S. *v.* Crussel, 14 Wall., 1; U. S. *v.* Ross, 92 U. S., 284; Rosenthal *v.* Walker, 111 U. S., 185.)

It is not correct, as stated in the opinion of the

* *Vide* Appendix.

circuit court, that this *prima facie* proof is overborne by the answers and the evidence.

The denial of notice in the answers must be taken as a mere *traverse* and not as evidence, seeing that the respondents *could not possibly have had any knowledge of the facts with regard to notice.* A witness must not only swear, *but swear credibly,* to be believed.

It is true that the witness, W. S. Alexander, one of the firm, swears that *he* never received notices similar to Exhibits A and B (depo., p. 62); but this may be true, and yet notice have been left at his place of business and not seen by him, or sent by post and not delivered, or, if delivered, not seen by him. In any of these events the requirements of the law as to demand and notice would be fully complied with. The merely negative evidence of this witness amounts to nothing at all in the face of the legal presumption that official acts proved to have been done have been *rite et sollenniter acta.*

Besides, section 3199, Revised Statutes, makes the collector's deed "*prima facie* evidence of the

facts therein stated;" and, furthermore, provides that if the proceedings of the officer as set forth in the deed have been substantially in accordance with law, the deed shall have effect.

To say that there has not been a substantial compliance with the law in this case is, it seems to us, to shut one's eyes as to the facts.

But the learned judge of the court below seems to have been astute to find reasons for dismissing the bill. He proceeds on the ground, always discountenanced in this court, that the collection of the revenue may be frustrated by the laches of officials. It may be that hard cases will occur by enforcing the rigorous rules laid down by this court, but it is better that individuals should suffer, occasionally, than that the public credit, nay, even the very existence of the Government should be endangered. Indeed the court below is strangely at fault in saying that this suit is the first opportunity that has been offered for contesting the validity of the said assessment or levy, seeing that section 3226 expressly provides that the aggrieved tax-payer

may appeal to the Commissioner of Internal Revenue. Having this privilege of appeal it is remarkable that Alexander & Co did not avail themselves of it, if they had been illegally dealt with.

That the deed from Allen to Wilson raises a cloud upon the Government's title does not admit of question, and is nowhere denied.

We respectfully submit that the decree must be reversed.

WM. A. MAURY,
Assistant Attorney-General.

APPENDIX.

SECTIONS 3184 AND 3185 REVISED STATUTES.

SEC. 3184. Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof. If such person does not pay the taxes, within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of five per centum additional upon the amount of taxes, and interest at the rate of one per centum a month.

SEC. 3185. All returns required to be made monthly by any person liable to tax shall be made on or before the tenth day of each month, and the tax assessed or due thereon shall be returned by the Commissioner of Internal Revenue to the collector on or before the last day of each month. All returns for which no provision is otherwise made shall be made on or before the tenth day of the month succeeding the time when the tax is due and liable to be assessed, and the tax thereon shall